Supreme Court, U.S.
FILED
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(4)

No. 97-731

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

CHRIS W. BEGGERLY, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: OCTOBER 27, 1997
CERTIORARI GRANTED: JANUARY 9, 1998

243 PP

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NOTICE

The following items have been omitted in printing this appendix because they appear on the following pages of the printed appendix to the petition for a writ of certiorari:

District court's order on United States' motion to dismiss and respondents' motion for summary judgment (August 17, 1995) 32a
District court's order of dismissal (August 23, 1995) 45a
District court's order denying respondents' motion for rehearing (Sept. 21, 1995) 47a
Initial opinion of court of appeals (May 29, 1997) 17a
Court of appeals' substitute opinion on rehearing (July 28, 1997) 1a
Court of appeals' order denying rehearing and rehearing en banc (July 29, 1997) 52a
Final judgment and order in *United States* v. *Adams* 54a
Stipulation and settlement in *United States* v. *Adams* 56a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

Docket No. 94-CV-264

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

DOCKET ENTRIES

1994

June	1	(1)	COMPLAINT Filing Fee $120.00 Receipt # 2263; jury demand (db)
			* * * * *
Oct.	11	(6)	ANSWER to Complaint by defendant USA (Attorney Donald M. Waits); CMC memo setting new conference date to 10/17/94 at 11:15 a.m. mailed to all attorneys. (db) [Entry date 10/12/94]

1995

Jan. 17 (15) MOTION by defendant USA to Dismiss (mp)

17 (16) Exhibits supporting government's dispositive motion. (mp)

* * * * *

Mar. 17 (28) MOTION by plaintiff pall for Summary Judgment (Exhibits separate in file) (wl)

* * * * *

17 (29) ITEMIZATON of FACTS by plaintiff pall in support of [28-1] motion for Summary Judgment (Exhibits separate in file) by plaintiff (wl)

July 12 (37) MOTION by the plaintiffs to Amend complaint (mp) [Edit date 07/13/95]

July 26 (38) Response by defendant USA in opposition to [37-1] motion to Amend Complaint. (mp) [Entry date 7/27/95]

* * * * *

Aug. 17 (42) MEMORANDUM ORDER denying [28-1] motion for Summary Judgment (Exhibits separate in file), granting [15-1] motion to Dismiss (signed by Judge Dan M. Russell

Jr.); copies mailed. ob: 1995 page: 1245-1256 (mp) [Edit date 08/17/95]

* * * * *

23 (43) ORDER OF DISMISSAL THAT USA MOTION TO DISMISS IS granted WITH PREJUDICE; plaintiff's motion for summary judgment is DENIED; all pending non-dispositive motions including motion to amend and motion to Strike Sur-Response is DENIED (signed by Judge Dan M. Russell Jr.); copies mailed. (mp)

* * * * *

Sept. 21 (48) MEMORANDUM OPINION and ORDER denying [44-1] motion for Re-Hearing (signed by Judge Dan M. Russell Jr.); copies mailed. ob: 1995 page: 1477-1480 (mp)

* * * * *

Oct. 4 (50) NOTICE OF APPEAL of [43-1] order, [48-1] order by plaintiff Chris W. Beggerly, plaintiff James R. Beggerly, plaintiff Clark M. Beggerly, plaintiff Velma B. Garner, plaintiff Suzanne Reed, plaintiff David Reed. FILING FEE $105.00 RECEIPT # 7631; Appeal record due on 10/19/95 (avm)

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60625

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

APPEAL FROM THE SOUTHERN DISTRICT OF MISSISSIPPI, BILOXI

DOCKET ENTRIES

1995

Oct.	11	US civil case docketed. NOA filed by Appellant Chris W. Beg gerly, Appellant James R Beggerly, Appellant Clark M Beggerly, Appellant Velma B Garner, Appel lant Suzanne Reed, Appellant David Reed. [95-60625] ROA due on 10/26/95. (cnf)

* * * * *

1996

Jan.	5	Appellant's Brief filed by Appellant David Reed, Appellant Suzanne Reed, Appellant Velma B Garner, Appellant Clark M Beggerly, Appellant James R. Beggerly, Appellant Chris W Beggerly. Copies of brief: 7 # of pages: 47. Sufficient [Y/N]: Y . [95-60625] A/Pet's Brief ddl satisfied. E/Res's Brief due on 2/5/96 for USA. (tjt)
	5	Record excerpts filed by Appellant David Reed, Appellant Suzanne Reed, Appellant Velma B Garner, Appellant Clark M Beggerly, Appellant James R. Beggerly, Appellant Chris W Beggerly # of copies: 7 Sufficient [Y/N]: N Needs Cert. of Service & contains excess pages. [95-60625] Sufficient Record Excerpts due on 1/18/96 for Chris W Beggerly, for James R Beggerly, for Clark M. Beggerly, for Velma B Garner, for Suzanne Reed, for David Reed (tjt)

* * * * *

	29	Amicus curiae brief filed by Amicus Curiae Amer Farm Bureau Fed, Amicus Curiae MS Farm Bureau Fed. Copies of Brief: 7 # of pages: 10. Sufficient [Y/N]: Y. [95-60625]

E/Res's Brief ddl updated to 2/28/96 for USA. (tjt)

29 Amicus curiae brief filed by Amicus Curiae Southeastern Legal. Copies of Brief: 7 # of pages: 8. Sufficient [Y/N]: Y. [95-60625] (tjt)

* * * * *

Apr. 1 Brief filed by Appellee USA. Copies of Brief: 7 # of pages: 37. Sufficient [Y/N]: Y. [95-60625] E/Res's Brief ddl satisfied. Reply Brief due on 4/15/96 for Chris W Beggerly, for James R Beggerly, for Clark M Beggerly, for Velma B Garner, for Suzanne Reed, for David Reed. (tjt)

* * * * *

17 Reply brief filed by Appellant David Reed, Appellant Suzanne Reed, Appellant Velma B Garner, Appellant Clark M Beggerly, Appellant James R Beggerly, Appellant Chris W Beggerly. Copies of Brief: 7 # of pages: 25. Date of COS: 4/14/96 Sufficient [Y/N]: N. wrong color cover. [95-60625] Sufficient Brief due on 4/29/96 for Chris W Beggerly, for James R Beggerly, for Clark M Beggerly, for Velma B Garner, for Suzanne Reed, for

David Reed. Reply Brief ddl satisfied. (mrw)

* * * * *

Sept. 4 Oral argument heard. Case argued by Ernest G Taylor for Appellant Chris W Beggerly, Appellant James R Beggerly, Appellant Clark M Beggerly, Appellant Velma B Garner, Appellant Suzanne Reed, Appellant David Reed, William Brandt Lazarus for Appellee USA [95-60625] (sme)

* * * * *

* * * * *

1997

May 29 Opinion filed. Issd in T form? y Issue Mandate due on 7/21/97. [95-60625] (dse)

29 Judgment entered and filed. [95-60625] (dse)

* * * * *

July 14 Petition filed by Appellee USA for rehearing. # of copies filed: 20. [675254-1] Issue Mandate ddl canceled. [95-60625] (dmd)

14 Suggestion filed by Appellee USA for rehearing en banc. # of copies filed: 20. [675255-1] [95-60625] (dmd)

* * * * *

28 COURT Order filed denying petition for rehearing [675254-1]; further denying suggestion for rehearing en banc [675255-1]. With poll (Y/N)?: N. Issue Mandate due on 8/4/97. (HAP) Copies to all counsel. [95-60625] (dmd)

28 Opinion withdrawn. opinion [634990-1] [95-60625] (dse)

* * * * *

28 Opinion filed. Iss'd in T form? y [95-60625] (dse)

28 Judgment entered and filed. [95-60625] (dse)

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. 1:94CV264RR

CHRIS W. BEGGERLY, JAMES R. BEGGERLY, CLARK M. BEGGERLY, JR., VELMA B. GARNER, SUZANNE REED AND DAVID REED, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

[Filed: June 1, 1994]

COMPLAINT

Come now Plaintiffs, the heirs of Clark M. Beggerly, Sr. and members of his family including Chris W. Beggerly, James R. Beggerly, Clark M. Beggerly, Jr., Velma B. Garner, Suzanne Reed and David Reed (hereinafter the "Beggerlys" or the "Beggerly family"), who bring this their suit against the Defendant, United States of America ("United States"). In support of their complaint the Beggerlys allege the following:

Jurisdiction

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution, laws and treaties of the United States.

2. Further, this Court has jurisdiction because this action is ancillary to the action filed by the United States in 1979 in *United States of America v. Adams, et al.*, Civil Action No. S79-0338(R) (hereinafter the "*Adams-Beggerly* suit").

Jury Trial Requested

Parties

3. Clark M. Beggerly, Sr., deceased, was a train engineer for the Illinois Central Railroad. He had five children, Chris W. Beggerly, James R. Beggerly, Clark M. Beggerly, Jr., Velma B. Garner, all of whom are plaintiffs, and Norma B. Reed, who is deceased. The other two plaintiffs, Suzanne Reed and David Reed, are the children of Norma B. Reed and grandchildren of Clark M. Beggerly, Sr.

4. The defendant is the United States of America which owns approximately 723 million acres of land, which is about one-third of the nation's total land area. It owns 1,759,000 acres of land in the State of Mississippi which is approximately 6% of the State's total land area. For purposes of the *Adams-Beggerly* suit, the United States acted through its Department of Interior and Bureau of Land Management which acquire and manage land for the United States. In 1979, when the *Adams-Beggerly* suit was filed, the appropriation for the Department of Interior was $8,300,000,000. In the current fiscal year, the Department of Interior has an appropriation of $13,400,000,000.

Facts

5. On April 3, 1950, certain properties in Jackson County, Mississippi, were placed on sale at the Jackson County Courthouse in Pascagoula, Mississippi, for delinquent taxes.

6. Clark M. Beggerly, Sr., who was interested in making a long-term investment for the benefit of his family, attended the Jackson County tax sale and purchased approximately 626 acres on Horn Island, Jackson County, Mississippi, in the name of his son, James R. Beggerly. This acreage is described as Lots 1, 2, 3 and 4, Section 27, Township 9 South, Range 6 West; Lots 1, 2, 3 and 4, Section 28, Township 9 South, Range 6 West and Lots 1, 2, 3 and 4, Section 29, Township 9 South, Range 6 West. Also, Clark M. Beggerly, Sr. and A. E. Hurd purchased approximately 225 acres described as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Section 30, Township 9 South, Range 6 West.

7. On July 18, 1960, A. E. Hurd and Clark M. Beggerly, Sr. divided their jointly owned property. Clark M. Beggerly, Sr. conveyed Lots 5, 6, 7, 8 and 9 to A. E. Hurd and A. E. Hurd conveyed Lots 1 through 4 and Lot 10 to Clark M. Beggerly, Sr. Thereafter, Clark M. Beggerly, Sr. died leaving his interest in said lots to his wife, Norma A. Beggerly. On March 24, 1971, Mrs. Norma A. Beggerly conveyed these same lots to her children Clark M. Beggerly, Jr., Chris W. Beggerly, James R. Beggerly, Norma B. Reed and Velma B. Garner. Subsequently, Norma Reed died leaving her interests to her children, Suzanne and David.

8. But for the wrongful taking by the United States, the current interest of each plaintiff in the Horn Island property is as follows:

(a) James R. Beggerly owns a 100% interest in Lots 1, 2, 3 and 4, Section 27, Township 9 South,

Range 6 West; Lots 1, 2, 3 and 4, Section 28, Township 9 South, Range 6 West; and Lots 1, 2, 3, and 4, Section 29, Township 9 South, Range 6 West. He also owns an undivided one-fifth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

(b) Chris W. Beggerly owns an undivided one-fifth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

(c) Clark M. Beggerly, Jr. owns an undivided one-fifth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

(d) Velma B. Garner owns an undivided one-fifth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

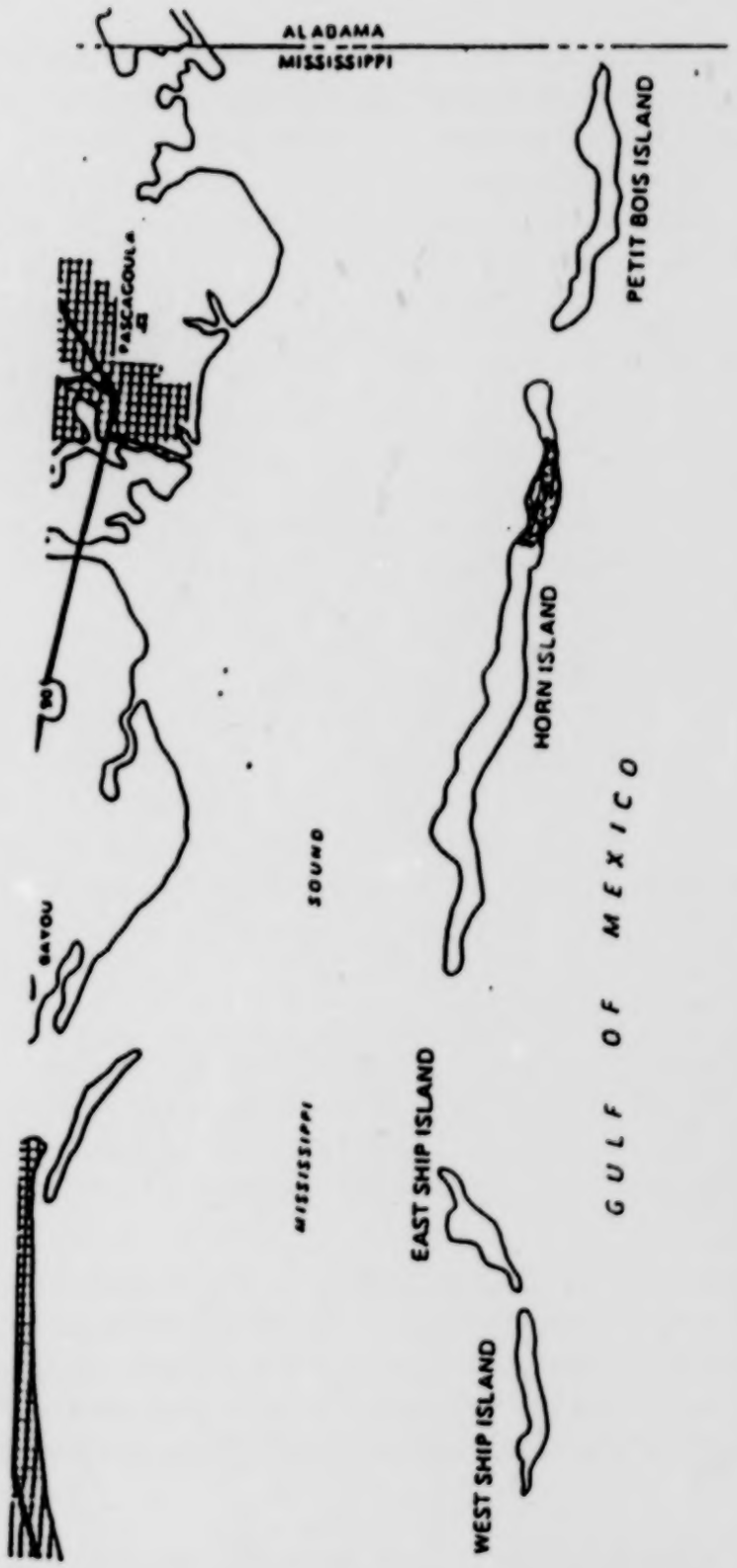
(e) Suzanne Reed owns an undivided one-tenth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

(f) David Reed owns an undivided one-tenth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

9. Horn Island is in Jackson County, Mississippi, about 13 miles southwest of the City of Pascagoula. Immediately to the East is Petit Bois Island and to the West is Ship Island. Horn Island is the largest of the three islands. It is approximately 14 miles long and one-half to three-fourths of a mile wide. The following map shows the location, size and shape of the three islands.

[Following]

*** Beggerly Property**



10. As indicated above, the Beggerly property is located on the east end of the island and fronts both the Gulf of Mexico and the Mississippi Sound. It includes more than three miles of beach front on the Gulf of Mexico and more than three miles of beach front on the Mississippi Sound.

11. After duly buying the subject land in 1950, the Beggerly family continually paid city and county ad valorem taxes on this property, exercised open, notorious, actual and continuous possession and enjoyed quiet and peaceful fee simple ownership of this property until 1979 when the United States wrongfully filed suit challenging their ownership.

12. On January 8, 1971, the United States Congress adopted legislation authorizing the Department of Interior to develop a new federal park made up of barrier islands including Horn, Petit Bois and Ship Islands to be known as the Gulf Islands National Seashore. The purpose of the Act was to protect the natural, historic and recreational values of the islands. Pub.L. 91-660; 84 Stat. 1967. (Codified at 16 U.S.C.A. 459h to 459h-10; hereinafter the "Gulf Islands Act" or "Act").

13. Consistent with the natural preservation objective stated in the Gulf Islands Act, the Department of the Interior in 1978 stated the following in its Environmental Impact Statement (hereinafter "EIS"):

> Acquisition of the privately owned undeveloped lands will prevent new individuals from living within the relatively undisturbed Seashore area. The acquisition of undeveloped private lands within the Seashore will also preclude the buying and marketing of such parcels in speculation and the resulting economic gains to persons involved in buying and selling.

EIS p.200.

14. The Act authorized the Department of Interior to acquire property for the park through three means: (1) transfer of title from other federal agencies to the Department of Interior; (2) donation of property from the states or private landowners; and (3) acquisition from private landowners.

15. The Act as adopted in 1971 provided an appropriation of $3,120,000 for acquisition of 400 acres of land. Consistent with the rapidly escalating land values in the area and the need to acquire more private land this appropriation was increased in 1972 to $3,462,000 and in 1976 to $22,162,000. As of 1978, the Department of Interior planned to purchase 1,325 acres of private land, acquire over 5,000 acres by transfers from other federal agencies that had title to the property and receive by donation 39,000 acres of submerged lands from the State of Florida.

16. In the mid 1960s, developers began a trend of developing barrier islands into recreational and resort properties along the southeast seacoast in response to a growing demand. First, islands along the southern Atlantic Seacoast were developed. By the early 1970s, development of barrier islands along the Florida Gulf Coast had begun. By late 1979, the trend had reached the Mississippi Gulf Coast as development of Petit Bois Island began. The success of these ventures indicated a strong market demand and the opportunity for substantial profits for developers, investors, homeowners and landowners.

17. From 1971 to 1979 extensive development occurred along the Gulf Coast of Florida, Alabama, Mississippi and Texas. Rapid development occurred in the recreation and second home market and the tourist industry grew dramatically. Mississippi economic forecasts made in the late 1970s anticipated continued rapid recreation, tourist and population growth through 1985.

18. Spurred by this dynamic development trend, the Department of Interior began taking steps to acquire title to the Mississippi barrier islands to prevent development of these islands and to assure that they would be preserved in their natural state consistent with the objectives of the Gulf Islands Act. On September 7, 1979, the United States sued the Beggerlys and certain other property owners on Horn, Ship and Petit Bois Islands in an effort to take their properties for the Gulf Island National Seashore. However, the United States did not file a condemnation suit and offer to pay the landowner the fair market value of their properties. It, instead, claimed that the Beggerlys and other defendants, all record title owners, did not have valid titles; that the United States had acquired title to these properties through the Louisiana Purchase in 1803; and that the United States had never issued patents or otherwise conveyed its interest to the State of Mississippi or to any private party.

19. In its suit against the Beggerlys, the United States demanded that the court determine that the Beggerlys and other defendants had no "right, title or interest" in and to their lands; that the Beggerlys and other defendants be permanently prohibited from entering upon or using their lands, and that they be

required to remove all improvements, if any, from said lands and to restore the lands to the condition they were in "prior to their unlawful entrance thereon." *Adams-Beggerly* Complaint, p.5.

20. The Beggerlys were shocked and dismayed when the federal marshal served them with the complaint. In their prior contacts with representatives of the United States Government during the early 1970s, the United States had acknowledged the Beggerlys' ownership and had even offered to buy the property. Then, out of the blue, and in total contrast with all of their prior dealings, the United States sued claiming the Beggerlys had no title and offering to pay nothing, not one cent. Since the Beggerlys had bought their property as a long-term investment almost thirty years earlier, had regularly paid the ad valorem taxes on it, had received no income from it and now were in a position to recognize a reasonable profit, the timing added insult to injury.

21. Though their resources were limited and they had to work on their defense during their limited free time from full-time jobs, the Beggerlys were determined to defend their title and property rights. They hired a lawyer who did extensive research of the pertinent land records and the law. They hired an expert who researched land records in Washington, D.C. Meanwhile, members of the family did research at the Mississippi Archives, the Archives in Mobile, Alabama and at various federal offices in the Washington, D.C. area. However, research was difficult. Settlement along the Mississippi Gulf Coast began with the landing of Sieur D'Iberville in 1699. From that time until Mississippi became a state in 1817, four sovereign nations ruled this area, each of

which made grants to private landowners which could be pertinent to the validity of current land titles. However, there is no central repository for these records and no general index or guide which can be used to assure that all pertinent records needed for research can be located. Requests to the United States' own agencies for any knowledge of a valid patent or grant were met with denials that such documents existed.

22. Nevertheless, the Beggerlys, their lawyers and experts made a diligent effort and succeeded in finding extensive evidence of private ownership, possession, use and occupancy of Horn Island from the eighteenth century forward. However, as the trial date approached, they did not have a valid patent or grant to support their title.

23. Faced with the United States' continual and unwaivering representation to the Court that there was no valid grant or patent to support the Beggerlys' title, and having no hope of producing the all important grant or patent by the trial date, the Beggerlys realized the futility of going to trial. On December 3, 1982, they accepted a nominal settlement of approximately $200 per acre. The United States paid the settlement to cover their litigation costs, time and trouble, but not one cent for the purchase of the Beggerlys' title. The Court, having no evidence of a valid patent or grant, and being assured by the United States that no such document existed, entered an order finding that the United States had title to the Beggerly property and that the Beggerlys were permanently prohibited from asserting any claim against the property.

24. Meanwhile, on the neighboring Petit Bois Island, which was also a part of the Gulf Islands National Seashore, a related but significantly different story was developing. On May 16, 1980, only a few months after suit was filed against the Beggerlys, the United States sued the owners of 717.42 acres of land on Petit Bois. In contrast to the *Adams-Beggerly* suit, in the *Petit Bois* suit the United States recognized the validity of the private title and its obligation to pay the landowners fair market value. *United States v. 717.42 Acres of Land*, Civil Action No. S80-0450(N), United States District Court, Southern District of Mississippi, Southern Division (hereinafter "the *Petit Bois* suit").

25. After extensive pretrial proceedings, the *Petit Bois* suit was tried and judgment entered as to the surface value on March 29, 1982. The total amount of this judgment was $6,120,000 plus interest from the date the suit was filed. This is an award of approximately $8,500.00 per surface acre. Subsequently, a separate valuation hearing on the mineral interest was held and an additional $1,071,534.00 plus interest was awarded for a 25 percent interest in the mineral rights. This is an award of $5,976 per acre for the fair market value of a 100 percent mineral interest. Therefore, when the $8,500 per acre surface award is added to the $5,976 per acre mineral award the total per acre award is $14,476.

26. Though the Beggerlys were outraged and disgusted with the outcome of their lawsuit, particularly in light of the Petit Bois development, they were convinced from all the evidence of private ownership over the centuries that there must be a valid grant or patent somewhere and they were

determined to find it. Therefore, they continued their search in the archives at Mobile, Alabama, the Mississippi State Archives, the Spanish Archives in New Orleans and at the National Archives in Washington, D.C. They contacted United States Congressmen, United States Senators, Secretaries of the Interior for three administrations and numerous other state and federal public officials and used Freedom of Information Act Requests to assist in gaining access to documents that might help. Finally, in 1992, after thirteen years of continuous, diligent effort, they found what they were looking for in the possession of the United States itself. In fact, they found the critical evidence, a 1781 grant of Horn Island, made by Bernardo de Galvez, Governor General of Spanish Louisiana to Catalina Boudreau, in the National Archives.

27. Believing that this grant confirmed their title, they sent it to the Department of Interior, Bureau of Land Management, and asked that it reconsider their title in light of this grant. On November 20, 1992, the Bureau of Land Management ("hereinafter BLM") denied that their newly discovered grant would help them prove their title. The BLM's comments are summarized at the end of its letter as follows:

> To summarize, the BLM finds that you do not have a valid claim to any land or minerals on Horn Island and that, therefore, you are not entitled to the patents you have requested. The land in question is owned by the Federal Government and has been since 1803, when it came into the U.S. as part of the Louisiana Purchase. Any claim you may have had was disposed of by your decision to settle the quiet title action in 1982. There is no

> affirmative evidence that the Spanish land grant you provided was ever properly confirmed and without such evidence the 1982 judgment stands and BLM is without power to issue you a patent.
>
> . . . .
>
> We have thoroughly researched your claims to the land on Horn Island and both management and staff have spent countless hours reviewing the facts in this case. We have also been working closely with the Solicitor's Office, which concurs in our decision and in this letter.
>
> It is our position that the BLM has done all that we can to assist you in finding answers to your lingering questions. At this point, we do not feel there is anything else we can do to assist you and this letter represents our final decision in this matter. If you still feel you have been wronged, your only recourse is through the U.S. judicial system.

28. Having exhausted administrative avenues, the Beggerlys, at substantial personal expense, again hired counsel to assist and advise them. Counsel, in turn, identified and hired experts to determine the authenticity and validity of the grant. Ultimately, they employed Dr. Hans Baade, a professor of international law at the University of Texas and a preeminent expert on early Spanish grants and their effect on United States land titles.

29. After careful study of the grant and other documents provided by the Beggerlys and records developed through his independent research, Dr.

Baade determined that the grant was authentic and that it was a valid grant of Horn Island to Ms. Boudreau. He further advised that through the Treaty of Amity, Settlement and Limits with Spain, 8 Stat. 252, signed in Washington on February 2, 1819 and approved and ratified by Spain on February 22, 1821, the United States had accepted the validity of this 1781 grant and that the United States confirmation hearings in the 1820s, subsequent to the Louisiana Purchase of 1803, had no bearing on this prior valid grant.

30. Therefore, by virtue of the Boudreau grant, Horn Island was in fact and law private property and consequently the Jackson County tax collector had authority to sell and did in fact sell a valid title to the subject property to Clark M. Beggerly, Sr. at the tax sale in 1950.

31. The Boudreau grant was found in the National Archives in Washington, D.C., in Volume 203, Land Claims East of the Pearl River, Evidence Book B, Item 126. It was part of the record of the First Report of the Land Commissioner East and West of the Pearl River, on Private Land Claims of January 5, 1816. The Boudreau grant and related documents have continuously been in the custody and control of the United States since 1816.

32. In fact, the Department of Interior, the department in charge of establishing the Gulf Islands National Seashore, was at the time that it sued the Beggerlys in charge of the government entity which had received, reported on, and archived the Boudreau grant in 1816.

COUNT 1

Fraud

33. The plaintiffs incorporate by reference Paragraphs 1 through 32 above.

34. The United States represented to the court, the Beggerlys and other defendants that the United States had always owned the Beggerly property on Horn Island and that there had never been a valid grant or patent of that property putting it into private ownership.

35. The existence of the Boudreau grant was material, in fact decisive, evidence in the *Adams-Beggerly* suit.

36. The United States, which had the Boudreau grant in its possession and under its control at all times, had a duty to disclose the existence of this grant to the Beggerlys and the Court. However, the United States, through its willful blindness and conscious avoidance of its affirmative obligation to thoroughly search its records and make full disclosure to the Court, failed to reveal the existence of this grant to the Court and to the Beggerlys. Therefore, the United States, whether wittingly or not, perpetrated a fraud on the Court and the Beggerlys.

37. In addition to its failure to affirmatively disclose the Boudreau grant, the United States, through its abysmal failure to organize and index the early colonial land grants, suppressed the existence of the Boudreau grant and thereby fraudulently concealed its existence from the Court and the Beggerlys.

38. After the Beggerlys discovered the Boudreau grant in 1992 and presented it to the Department of Interior, the United States fraudulently misrepresented its legal significance to the Beggerlys, continuing a pattern of misrepresentation and suppression of the truth.

39. Now that the Beggerlys have discovered the Boudreau grant, they have a solid winning defense to the alleged cause of action on which the *Adams-Beggerly* judgment was founded.

40. Because of this pattern of active or constructive fraud by the United States, the Beggerlys were prevented from presenting their defense to the court and obtaining the benefit of the defense.

41. The Beggerlys have continuously and diligently used all means and resources available to them to locate the Boudreau grant and present it to the proper officials. The Beggerlys have in fact gone above and beyond what any reasonable person would be expected to do under the circumstances.

42. The Beggerlys have no adequate remedy at law until and unless the Court sets aside the settlement agreement and judgment in the *Adams-Beggerly* suit.

43. The Beggerlys demand that this Court exercise its equitable powers and grant them relief from the *Adams-Beggerly* settlement and judgment and permit them to go forward with presenting evidence of their damages.

COUNT II

Mutual Mistake

44. The plaintiffs incorporate by reference paragraphs 1 through 43 above.

45. In the alternative, the United States' misrepresentations made to the Court and the Beggerlys were caused by the United States' gross negligence and mistake which the Beggerlys and the Court relied upon in accepting the settlement and judgment. Therefore, the acceptance of the settlement and entry of the judgment were based upon a mutual mistake of a material fact not caused by the fault or negligence of the Beggerlys. Under the Court's equitable powers, both the settlement and entry of judgment should be set aside to permit the Beggerlys to go forward with presentation of their damages.

COUNT III

Inverse Condemnation

46. The allegations of preceding paragraphs 1 through 45 are incorporated by reference.

47. The entry of judgment on December 3, 1982 in the *Adams-Beggerly* case constituted a taking of the Beggerly property without the payment of just compensation.

48. The United States had authority to use condemnation powers to take the Beggerlys' property for the Gulf Island National Seashore.

49. The United States, in lieu of condemnation, took the Beggerlys' property through the quiet title actin and the entry of judgment as aforesaid.

50. The Beggerlys have a constitutional right to just compensation for their property. The Beggerlys are entitled to be paid fair market value for their surface and mineral interests under condemnation principles.

51. The Beggerlys own 100 percent of the surface and mineral interests as described in paragraph 8, above.

52. As of December 3, 1982, the fair market value of the Beggerly property was not less than $14,500 per acre, the about amount awarded for the neighboring Petit Bois property.

53. The Beggerlys are entitled to be paid interest from and after the date of the taking, December 3, 1982, to the present on the fair market value of their property.

54. The Beggerlys are entitled to be paid attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. Section 2412(d).

Now therefore the Beggerlys do hereby request the Court to set aside the judgment in the *Adams-Beggerly* suit entered December 3, 1982, set aside the underlying settlement and, after conducting a hearing to determine the fair market value of the Beggerlys' property, award them damages of not less than $14,500 per acre plus interest from December 3, 1982 and reasonable attorneys' fees.

This, the 31st day of May, 1994.

Respectfully submitted,

THE BEGGERLY FAMILY
By Their Attorneys

By: /s/ ERNEST G. TAYLOR, JR.
ERNEST G. TAYLOR, JR.

Ernest G. Taylor, Jr. (MB #7451)
Jim B. Tohill (MB #8234)
Robert E. Hauberg, Jr. (MB #8958)
Robert M. Arentson, Jr. (MB #1612)
Watkins Ludlam & Stennis
633 North State Street
Post Office Box 427
Jackson, Mississippi 39205-0427
(601) 949-4900

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action Number: 1:94cv264RR

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

[Filed: Oct. 11, 1994]

ANSWER

The United States answers the complaint of plaintiff as follows:

1. Paragraph 1 is a conclusion of law and does not require an answer.

2. Paragraph 2 is a conclusion of law and does not require an answer.

3. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 3 and therefore deny the same.

4. Admit that the defendant is the United States of America. The balance of paragraph 4 is redundant and immaterial and does not require an answer.

5. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 5 and therefore deny the same.

6. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 6 and therefore deny the same. In addition, the allegations of paragraph 6 are redundant and immaterial and does not require an answer.

7. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 7 and therefore deny the same. In addition, the allegations of paragraph 7 are redundant and immaterial and does not require an answer.

8. Deny the allegations of paragraph 8.

9. Admit paragraph 9.

10. Admit paragraph 10.

11. Deny that the defendant wrongfully filed suit. As to the remainder of paragraph 11, defendant is without sufficient knowledge to admit or deny the those allegations and therefore deny the same. In addition, the remaining allegations of paragraph 11 are redundant and immaterial and does not require an answer.

12. Admit that Congress passed Pub. L. 91-660, 16 U.S.C. §§ 459h et seq. Such act speaks for itself and deny any interpretation placed thereon.

13. Admit that the defendant prepared an Environmental Impact Statement. Such EIS speaks for itself and deny any interpretation placed thereon.

14. Paragraph 14 is a conclusion of law and does not require an answer.

15. The first sentence of paragraph 15 is a conclusion of law and does not require an answer. As to the remaining allegations of paragraph 15, defendant is

without sufficient knowledge to admit or deny the allegations of paragraph 15 and therefore deny the same. In addition, the remaining allegations of paragraph 15 are redundant and immaterial and does not require an answer.

16. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 16 and therefore deny the same. In addition, the allegations of paragraph 16 are redundant and immaterial and do not require an answer.

17. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 17 and therefore deny the same. In addition, the allegations of paragraph 17 are redundant and immaterial and do not require an answer.

18. Defendant is without sufficient knowledge to admit or deny the allegations of the first sentence of paragraph 18 and therefore deny the same. In addition, the allegations of the first sentence of paragraph 18 are redundant and immaterial and do not require an answer. The defendant affirmatively alleges that, on September 7, 1979, United States filed a quiet title action, *United States of America v. Adams, et al*, in the U.S. District Court for the Southern District of Mississippi, Civil action No. S 79-0338 (C). The complaint speaks for itself and defendant denies any interpretation place thereon. Any allegations of paragraph 18 not previously answered are hereby denied.

19. The complaint in the *Adams* case speaks for itself and defendant denies any interpretation place thereon. Any allegations of paragraph 19 not previously answered are hereby denied.

20. The allegations of paragraph 20 are immaterial and impertinent and do not require an answer.

21. Defendant is without sufficient knowledge to admit or deny the allegations of the first five sentences of paragraph 21 and therefore deny the same. In addition, the allegations of the first five sentences of paragraph 21 are redundant and immaterial and do not require an answer. Admit the remainder of paragraph 21.

22. Admit the last sentence of paragraph 22. As to the remainder of paragraph 22, defendant is without sufficient knowledge to admit or deny the allegations and therefore deny the same. In addition, the remaining allegations are redundant and immaterial and do not require an answer.

23. Defendant affirmatively alleges that plaintiffs' predecessors in interest and the United States entered into a stipulation and settlement on December 3, 1982 which was filed with the court. Based upon this stipulation and settlement, the court entered its order on December 3, 1982 in which it quieted title to the subject property in the United States, ordering that the United States "has title in fee simple absolute." As part of the settlement, the United States paid the Beggerly plaintiffs $208,175.87, plus attorney's fees and costs to their attorney, James L. Martin. Mr. Martin, who represented other defendants, received a total of $45,308.65. Any allegation of paragraph 23 not previously answered is hereby denied.

24. The allegations of paragraph 24 are immaterial and impertinent and do not require an answer.

25. The allegations of paragraph 25 are immaterial and impertinent and do not require an answer.

26. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 26 and therefore deny the same. In addition, the allegations of paragraph 26 are redundant and immaterial and do not require an answer.

27. In response to paragraph 27, Defendant affirmatively alleges that the materials plaintiffs presented to the Department of the Interior as newly found evidence did not establish proof of a valid claim to title in the property prior to the quiet title judgment. Admit that the Defendant of the Interior did write a letter to plaintiffs, which letter speaks for itself.

28. Paragraph 28 does not require a response.

29. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 29 and therefore deny the same. In addition, the allegations of paragraph 29 are redundant and immaterial and do not require an answer.

30. Deny Paragraph 30.

31. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 31 and therefore deny the same.

32. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 32 and therefore deny the same.

33. Defendant incorporates by reference its responses to paragraphs 1 through 32 above.

34. The representations of the United States in the *Adams* case are a matter of public record and speaks for itself. Deny any interpretation placed thereon by plaintiffs.

35. Deny paragraph 35.

36. Deny the first and last sentences of paragraph 36. The remaining allegations of paragraph 36 are immaterial and impertinent and do not require an answer.

37. Deny paragraph 37.

38. Deny paragraph 38.

39. Deny paragraph 39.

40. Deny paragraph 40.

41. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 41 and therefore deny the same. In addition, the allegations of paragraph 41 are redundant and immaterial and do not require an answer.

42. Paragraph 42 is a conclusion of law that does not require a response.

43. Paragraph 43 does not require a response.

44. Defendant incorporates by reference its responses to paragraph 1 through 43 above.

45. Deny paragraph 44.

46. Defendant incorporates by reference its responses to paragraphs 1 through 45 above.

47. Paragraph 47 is a conclusion of law that does not require a response.

48. Admit that the United States generally possesses the power to condemn property. Deny that the

Beggerlys owned any property within the Gulf Island National Seashore.

49. Deny paragraph 49.

50. Paragraph 50 is a conclusion of law that does not require a response.

51. Deny paragraph 51.

52. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 52 and therefore deny the same.

53. Deny paragraph 53.

54. Deny paragraph 54.

Any allegation of plaintiff's complaint not previously admitted or denied is hereby denied.

AFFIRMATIVE DEFENSES

1. The complaint of plaintiffs fails to state a claim for which relief can be granted.

2. In *United States of America v. Adams, et al*, U.S. District Court for the Southern District of Mississippi, Civil action No. S 79-0338 (C), ("*Adams* Case") the court entered a Judgment and Order on December 3, 1982, which determined that the United States had and has title in fee simple absolute to the property and the subject of this litigation. This Judgment and Order of this court is res judicata to the issues raised herein and preclude plaintiffs from relitigating the issue of title.

3. In the order entered by this court in the *Adams* Case on December 3, 1982 referred to above, the court further ordered:

> FURTHER ORDERED that all defendants and their heirs are permanently enjoined from asserting any adverse claims to the subject property described in the Complaint * * *

By continuing to assert title and adverse claims to the fee simple ownership of the United States, by filing this action and by other acts, plaintiffs are in violation of this court's order.

4. No mutual mistake of fact occurred relating to the Stipulation and Settlement executed on December 3, 1982 or the judgement and order entered December 3, 1982 in the *Adams* Case. If, arguendo, such a mutual mistake did occur, it cannot be raised after one year after entry of judgment pursuant to Rule 60(b), F.R.Civ.P.

5. Defendant did not commit fraud upon plaintiffs or their predecessors in interest in relation to the Stipulation and Settlement executed on December 3, 1982 or the judgement and order entered December 3, 1982 in the *Adams* Case. If, arguendo, such fraud did occur, it cannot be raised after one year after entry of judgment pursuant to Rule 60(b), F.R.Civ.P.

6. Plaintiffs have received fair and just compensation for any claim of interest in the property. In exchange for the Stipulation and Settlement executed on December 3, 1982 or the judgement and order entered December 3, 1982 in the *Adams* Case, plaintiffs were paid $208,175.87, plus attorney's fees and costs. Plaintiffs cannot seek equity while retaining such just compensation.

7. Since plaintiffs claim for inverse compensation exceeds $10,000, this court lacks jurisdiction to hear the action.

8. It is not in the interest of justice to transfer this action to the Court of Federal Claims since plain-

tiffs' claim arose prior to six years prior to the bringing of this action and is therefore barred by the statute of limitations, 28 U.S.C. § 2501.

9. Pursuant to the Assignment of Claims Act, 31 U.S.C. § 3727, plaintiff lacks standing to assert claims or seek recovery for the taking of some or all of the land which is the subject matter of the complaint.

WHEREFORE, defendant prays that plaintiffs take nothing as a result of its complaint, that judgment be entered in favor of defendant, that the complaint of plaintiffs be dismissed with prejudice, that defendant be awarded costs, and for such other and further relief as is just.

Dated: October 11, 1994.

Respectfully submitted,

GEORGE PHILLIPS
United States Attorney

/s/ DONALD M. WAITS
DONALD M. WAITS
Assistant U.S. Attorney
P.O. Box 1417
Biloxi, MS 39533
(601) 432-5521
Mississippi Bar No. 6859

STUART B. SCHOENBURG
General Litigation Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 663
Washington, DC 20044-0663
(202) 272-8207

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. 579-0338 (C)

UNITED STATES OF AMERICA, PLAINTIFF

v.

DR. ANDREW J. ADAMS, JESSE J. ALLEN, SHELTON P. ALLEN, DR. DEWEY ANDERSON, ARTHUR BAKER, RALPH J. BAKER, RAYMOND BASS, C. M. BEGGERLY, CHRIS W. BEGGERLY, CLARK M. BEGGERLY, JR., JAMES R. BEGGERLY, J. R. BEGGERLY, NORMA A. BEGGERLY, BERNARD J. BENNETT, ORA C. BENNETT AND ROBERT A. BENNETT, ANTHONY J. AND GRACE B. BERTUCCI, JOE K. BISHO, T. G. BLACKWELL, JAKE BLUM, CLYDE BOSORGE, G. F. BOSTWICK, GORDON S. BOWDISH, DAN E. BRELAND, MARGARET M. BROU, H. G. BROWN, GILLES G. AND GERDA L. BROY, CARLOS BUFFINGTON, MICHAEL AND LOUISE BUMBURA, ALAN BURIN, KATHERINE V. BUSCH, MARYANN S. BYRD, [MAY OR MARY] ANN CAMPBELL, WILLIAM D. CARROLL, SR., GEORGE CASTIGLIOLA, PAUL CHAMBERS, GEORGE AND SOFIA COLLETTE, W. M. COLMER, JERRY, JR. AND SHANNON R. COVICH, WILLIAM CRUSO, A. W. CAUACEVICH, MARY ANN CUMMINGS, BETTY CURTIS, F. P. CURTIS, GENEVIEVE W. CURTIS, LEWIS E. CURTIS, L. E. CURTIS, JR., WAKEMAN B. CURTIS, W. B. CURTIS, D & N EXCLUSIVE PROPERTIES, A LOUISIANA COMPANY, HOMER B. DAVIS, JR., ROGER P. AND GEORGE C. DAY, 1 CONSTITUTION PLAZA, E. J. DELCAMBRE, DELTA SALES CORPORATION, NOW KNOWN AS FINE VINES, INC., A MISSISSIPPI CORPORATION, W. W. DIBBLE, DAVID A. AND

ADELAIDE H. DOHERTY, J. E. AND CHRISTINA S. DUNBAR, CLYDE R. DUNNAWAY, DR. CLAY EASTERLY, C. H. EISENDRATH, H. P. FLATEAU (ESTATE OF), JIM FOKAKIS, LOUIS FONDREN, MICHAEL L. AND SUZANNE FONDREN, J. I. FORD, ABE FREY, HARRY FREY, J. A. FURR, JR., GEORGE W. GARDNER, VELMA B. GARNER, ELMER H. GAUTIER, H. W. GAUTIER, BARNEY GILES, MARLENE A. GILLICH, BARNEY GILLIS, L. A. GILLY, JR., CHARLES C. GOETZ, JR. AND LEE GARRETT GOETZ, GARY GOLLOTT, GROVER GRAHAM, JR., GLEN GRIFFING, CHARLES J. GUICE, SR., HANCOCK BANK, JOHN M. HARRINGTON, ELLISON HEBERT, B. G. (BARTLO) HUNT, A. E. HURD, A. E. HURD, ANTHONY J. INGRASSIA, JARDELL, INC., A MISSISSIPPI CORPORATION, JACK CHARLES JESSUP, J. CHARLES JESSUP, JEAN M. JOHNSON, BETTY JEAN JOHNSON, W. B. JONES, NAIF JORDAN, G. J. JUANICO, CHARLES B. AND MILDRED K. KLEPAC, ALVIN L. KLOTZ, CAREY W. KLOTZ, KULUZ BROTHERS PACKING COMPANY, KENNETH A. LADNER, DOROTHY S. AND VEEN LEE, JR., CELESTE F. LEGUENEC, FRED LEMON, HELEN GEORGE LEONARD, JAMES S. LOVE, JR., JIMMY LOVE, JR., R. C. LOWREY, VAL LUNDAY, GUS THEO MARODIS, GEORGE T. MARODIS, MELBEN OIL COMPANY, SIDNEY MILLER, GEORGE M. AND LILLIAN N. MITCHELL, J. C. MCBEATH, JAMES KENDRICK MCCARLEY, JIMMY L. AND AIMEE MCCLELLAN, JUDE T. AND MARTHA M. MCDONNELL, JOSSETA NIZETICH, JOHN B. OAKLAND, CITY OF OCEAN SPRINGS, MS., JERRY O'KEEFE, L. M. PAGE, WENDELL PALFREY, ANGE PARASKEVAS, JONNIE PARKINSON, CARL P. PETERSON, PETIT BOIS, INC., A LOUISIANA CORPORATION, MATEO P. PITALO, NICK AND LENORA PITALO, VICTOR B. PRINGLE, M. B. PUCKETT, LAZ QUAVE, DEWEY R. REAGAN, RED OAK LANDS, INC., A SOUTH CAROLINA CORPORATION, NORMA B. REED, C. J. RIVIERE, G. H. ROHR, BEVERLY C. ROMERO, JOHNNY ROMEO, ALLEN D. AND BETTY

ROOKE, ROY ROSALIS, THAD J. AND CAROL H. RYAN, JAMES REGINALD SANDERFORD, DONALD F. SANTA CRUZ, JR., THELMA J. SKRMETTI SCALFARO, WILLIAM FRANCK SCHENK, II, MIKE SEKUL, STEVE SHIRVERS, SILVER BEACH DEVELOPMENT COMPANY, GALE SINGLEY, ANTHONY J. AND MARGARET SKRMETTA, NOEL JAMES SKRMETTI SKRMETTA, PETER V. SKRMETTI SKRMETTA, SR., BRENDA K. SKRMETTI, JIMMIE SCRMETTI, GILDA R. SKRMETTI, PATRICK FRANCES SKRMETTI, PAUL M. SKRMETTI, MRS. PAUL M. SKRMETTI, PAUL M. SKRMETTI, JR., SKRMETTI REALTY COMPANY, THELMA P. SKRMETTI, THOMAS J. SKRMETTI, VIRGINIA E. SMITH, FRANCIS I. STANOVICH, J. D. STENNIS, JR., DR. RAY STEWART, RONNIE STRAHAN, SANTO STRANGI, JR., JUNE READ STRINGER, T. J. SWETMAN, MARY TILLINGHAST, E. L. TRENHOLM, F. A. TUCCI, JAMES E. UPSHAW, J. J. VIATOR, JR., FORDIE WALKER, MICHAEL J. WASHENKO, ARNOLD ARMAND WEILBACHER AND DORIS E. WILBACHER, ADRAIN WEILL, WALTER N. WENTZELL, HELEN B. WILKERSON WILKINSON, CARROLL E. WILLIAMS, JR., TRINITY WILLIAMS, THOMAS J. WILTZ, H. H. WOLFE, RICHARD L. YARBROUGH, STANFORD YOUNG, ALL UNKNOWN CLAIMANTS AND, IF DECEASED, THEN ALL HEIRS AND DEVISEES, THE STATE OF MISSISSIPPI ON BEHALF OF ITS CITIZENS

[Filed: Sept. 7, 1979]

COMPLAINT

Come now the plaintiff, United States of America, by Robert E. Hauberg, United States Attorney, at the request of the Secretary of the Interior of the United States, and alleges as follows:

1. This is a civil action brought by the United States in its sovereign and proprietary capacity, and the jurisdiction of this Court is invoked under 28 U.S.C. 1345.

2. The real property which is the subject of this action is located within the territorial jurisdiction of this Court.

3. Attached hereto is SCHEDULE A which is a listing of the defendants including corporations, business entities, and individuals who are adult resident citizens of the places as noted, and all whose addresses are listed can be served with process of this Court at the addresses noted; all others have unknown addresses.

4. The United States is the owner in fee simple of certain real property situated on Horn Island, Jackson County, Mississippi, situated about 13 miles southwest of the City of Pascagoula, described according to the public land surveys as follows:

(A) TOWNSHIP 9 SOUTH, RANGE 6 WEST, ST. STEPHENS MERIDIAN, all of fractional Sections 27, 28, 29, 30, 33 and 34; and in TOWNSHIP 9 SOUTH, RANGE 7 WEST, ST. STEPHENS MERIDIAN, in fractional Section 25, all of Lots 11, 12, 13, 14, 15 and 16.

Containing 1,215.78 acres more or less.

(B) TOWNSHIP 9 SOUTH, RANGE 7 WEST, ST. STEPHENS MERIDIAN, in fractional Section 22, all of Lots 11, 12, 13, 14, 15, 16, 17, 18 and all of fractional Sections 23, 26 and 27.

Containing 677.60 acres, more or less.

(C) TOWNSHIP 9 SOUTH, RANGE 7 WEST, ST. STEPHENS MERIDIAN, in fractional Section 18, all of Lot 5, and in fractional Section 19, all of Lots 8 and 9; and all accretions thereto, and in TOWNSHIP 9 SOUTH, RANGE 8 WEST, ST. STEPHENS MERIDIAN, all of fractional Sections 13, 23 and 24, and all accretions thereto.

Containing 525.51 acres, more or less.

5. The United States is the owner in fee simple of certain real property situated on Petit Bois Island in Mississippi Sound, Jackson County, State of Mississippi, described according to the public land surveys as follows:

TOWNSHIP 9 SOUTH, RANGE 4 WEST, ST. STEPHENS MERIDIAN, all of factional Section 31, all of fractional Section 32 and all accretions thereto.
TOWNSHIP 10 SOUTH, RANGE 4 WEST, ST. STEPHENS MERIDIAN, all of factional Section 6.

Containing 153.50 acres, more or less.

6. The United States is the owner in fee simple of certain real property situated on Ship Island, Harrison County, Mississippi, described as all that portion of Ship Island lying Northerly and Easterly of the Quarantine Station in projected Sections 20, 21, 22, 28 and 29, Township 9 South, Range 9 West of the St. Stephens Meridian in Harrison County, Mississippi more particularly bounded and described as follows:

Bounded on the Southeast by the Gulf of Mexico; bounded on the South and West by Quarantine Station and Grand Lagoon; bounded on the North by Mississippi Sound. The tract of land herein described includes all small islands adjacent to said tract.
Containing 242.24 acres, more or less.

7. Real property described in paragraphs 4, 5, and 6 above is designated on the plats filed simultaneously herewith which can be examined in this Court's Clerk office, Post Office Building, Biloxi, Mississippi.

8. The United States acquired the property described in paragraphs 4, 5 and 6 as part of the Louisiana Purchase in 1803. These lands were designated as part of the Gulf Islands National Seashore by the Act of January 8, 1971, 84 Stat. 1967 (1971).

9. The United States has never issued a patent on, nor has it otherwise conveyed, the real property described in paragraphs 4, 5 and 6 above, and title hereto remains in the United States.

10. The defendants and each of them claim or may claim a right, title or interest adverse to the United States to certain of the tracts of property owned by the United States described in paragraphs 4, 5 and 6, above, which are set forth in the 128 tracts contained in Schedule B attached hereto and made part hereof. Such claims are without any right whatsoever.

11. The above-mentioned claims constitute a cloud on the title of the United States to the above-described property.

WHEREFORE, the United States prays:

1. That the defendants, and each of them, be required to set forth their claims to the above-described property;

2. That all claims to the property be determined by this Court;

3. That it be declared that the plaintiff has been and now is the owner of the lands described in paragraphs 4, 5 and 6, above, and as further described in Schedule B to the complaint, and that title to said lands be quieted in the United States;

4. That it be declared that the possession of the defendants, and each of them, has been and now is without any right, title, or interest in and to the lands described in paragraphs 4, 5 and 6 of the complaint; that the defendants, and each of them, be permanently enjoined from entering upon or using said lands, and that defendants be required to remove all improvements, if any, from said lands and to restore said lands to the condition prior to their unlawful entrance thereon;

SCHEDULE A

CLAIMANTS NAMES AND ADDRESSES WHERE KNOWN

Adams, Andrew J., Jr. (Dr. P. O. Box 171 Gautier Mississippi	10-157
Allen, Jesse J.	10-185

Allen, Shelton P.	02-157 02-158
Anderson, Dewey (Dr.)	02-161
Baker, Arthur 206 Keller Avenue Biloxi, MS 39530	10-195 to 201
Baker, Ralph J. 207 Keller Avenue Biloxi, MS 39530	10-195 to 201
Bass, Raymond P. O. Box 1082 Biloxi, Mississippi	10-188
Beggerly, C. M., Estate of Route 9, Box 10 Jackson, Mississippi	02-130 to 132
Beggerly, Chris W.	02-130
Beggerly, Clark M., Jr.	02-130
Beggerly, James R.	02-130
Beggerly, J. R. P. O. Box 505 Axis, Alabama 36505	02-133
Beggerly, Norma A. Rt. 9 Box 10 Jackson, MS 39212	02-130

Bennett, Bernard J.	10-123
Bennett, Ora C. and Robert A.	10-114 10-116 10-118 10-123 10-131
Bertucci, Anthony J. and Grace B. 4615 Lewis Street Gulfport, Mississippi 39501	10-115
Bishop, Joe K.	10-144
Blackwell, T. G.	02-159 02-161
Blum, Jake	10-192
Bosorge, Clyde	04-106
Bostwick, G. F.	10-143
Bowdish, Gordon S.	10-171 to 194 10-204 to 206
Breland, Dan E. 1341 Northside Drive Jackson, Mississippi 39211	10-131
Brou, Margaret M. 325 Jackson Avenue Ocean Springs, Mississippi 39564	10-145 10-156
Brown, H.G.	02-161

Bray, Gilles G. and Gerda L.	10-199
Buffington, Carlos	02-158

5. That the defendants be permanently enjoined from asserting any adverse claims to the property;

6. For an order granting the United States possession of the property;

7. That plaintiff be granted all further and general relief as the Court may deem just and proper in the premises; and

8. That plaintiff be awarded its costs expended herein.

9. And for all further relief as may be just and proper.

ROBERT E. HAUBERG
United States Attorney
Post Office Box 2091
Jackson, Mississippi 39205

By:
/s/ L. K. TRAVIS
L. K. TRAVIS
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. S79-0338(R)

UNITED STATES OF AMERICA, PLAINTIFF

v.

ANDREW J. ADAMS, JR., ET AL., DEFENDANTS

[Filed: December 30, 1982]

ORDER FOR DISTRIBUTION OF FUNDS

It appearing in the above styled cause, the hereinafter named Defendants appearing by and through their attorneys have agreed upon a settlement and disposition of the interests involved and whereby the Government has agreed upon the payment of the sum and amount of $400,000.00 into the registry of the Court for settlement and disposition as to the interests involved; and

WHEREAS, the parties in interest represented by counsel are the following, to-wit:

1. Arthur Baker, Ralph Baker, Walter N. Wentzell, L. M. Page and Francis Stanovich, represented by Lyle M. Page, Attorney.

2. David A. Doherty, Adelaide H. Doherty, Mrs. A. E. Hurd, Sr., Mrs. Anne H. Bradley, Mrs. Jane H. Sims, Mrs. Irene H. Hawley, Alfred E. Hurd, Jr., Louis W. Hurd, Mrs. Linda H. Smith and Mrs.

Faye H. McCarey, represented by Wynn E. Clark, Attorney.

3. W. B. Jones, representing himself.

4. First National Bank of Jackson, Trustee of Paul Chambers Mineral Trust, J. S. Love, Jr., M. B. Puckett and Petit Bois, Inc., represented by James L. Martin, Attorney.

5. State of Mississippi, represented by Mack Cameron, Assistant Attorney General.

6. E. J. Delcambre, Ronnie Strahan and Ellison Hebert, represented by C. W. Ford, Attorney.

7. Fred Lemon, represented by Russell Thompson, Attorney.

8. Lou Ann Gilly, Frances Wade Gilly and Ola Pitalo, represented by Jacob D. Guice, Attorney.

9. Jimmy and Aimee McClellan, Heirs of Carroll E. Williams and Allen D. Rooke and Betty Rooke, represented by George Morse, Attorney.

10. Marlene Gillich and Frank Schenck, represented by Keith Pisarich, Attorney.

11. Raymond Bass, Bartlo Hunt, Anthony J. Bertucci, Grace Bertucci and Noel J. Skrmetti, represented by Robert A. Acevedo, Attorney.

12. Cornelia Reagan Berry, Johnny & Beverly Romeo, Grover Graham, Jr., Thomas J. Wiltz, Margaret Brou, Johnnie Parkinson, Cosman Eisendrath, Dr. Clay Easterly, Mr. & Mrs. Donald Santa Cruz, Jerry & Shannon Covich, Mrs. Bobbye Pringle, Laz Quave, Mrs. Helen Leonard, A. W. Covacevich, Naif Jordan, Caroline Bell (Leader), Louis Fondren,

Genevieve Curtis and Wakeman B. Curtis, represented by Thomas J. Wiltz, Attorney.

13. Dan E. Breland, represented by R. L. Netterville, Attorney.

And it further appearing that by agreement of the parties through counsel of record, that as to the foregoing Defendants involved, that of the $400,000.00 proceeds deposited into the registry of the Court in the cause, the sum of $191,824.13 is to be distributed to the following individuals and/or their attorneys with the amounts being received by hereinafter named counsel, to be received for and on behalf of their respective clients and so that the Clerk is hereby authorized, directed and ordered to issue checks in distribution of the said sum of $191,824.13 as follows, to-wit:

James L. Martin, Attorney P. O. Box 15 Jackson, Mississippi 39205	$ 36,165.79
C. W. Ford, Attorney P. O. Box 100 Pascagoula, Mississippi 39567	3,367.94
W. B. Jones, Attorney P. O. Box 100 Pascagoula, Mississippi 39567	1,786.47
Lyle M. Page, Attorney P.O. Drawer 289 Biloxi, Mississippi 39533	50,152.98
Wynn E. Clark, Attorney P. O. Box 1673 Pascagoula, Mississippi 39567	31,922.19

Thomas J. Wiltz, Attorney P. O. Box 302 Biloxi, Mississippi 39533	25,285.89
R. L. Netterville, Attorney P. O. Box 946 Natchez, Mississippi 39120	2,928.64
Keith Pisarich, Attorney P. O. Box 936 Biloxi, Mississippi 39533	4,685.82
George Morse, Attorney P. O. Drawer 100 Gulfport, Mississippi 39501	4,442.75
Jacob D. Guice, Attorney P. O. Box 153 Biloxi, Mississippi 39533	4,240.67
Russell Thompson, Attorney P. O. Box 552 Ocean Springs, Mississippi 39564	1,765.97
Robert Acevedo, Attorney P. O. Box 136 Biloxi, Mississippi 39533	1,478.97
State of Mississippi c/o Mack Cameron Assistant Attorney General P. O. Box 220 Jackson, Mississippi 39205	1,014.32
Louis Fondren, Attorney 1205 Beach Boulevard Pascagoula, Mississippi 39567	585.73

James L. Martin, Attorney
P. O. Box 15
Jackson, Mississippi 39205 9,142.86

Genevieve Curtis
c/o Thomas J. Wiltz, Attorney
P. O. Box 302
Biloxi, Mississippi 39533 1,000.00

Wakeman B. Curtis
c/o Thomas J. Wiltz, Attorney
P. O. Box 302
Biloxi, Mississippi 39533 11,857.14

TOTAL $ 191,824.13

And it further appearing that the Defendants, James R. Beggerly and Chris W. Beggerly have settled with the Plaintiff as to their interest for the balance of funds involved in said $400,000.00 figure and whereby, said Defendant, James R. Beggerly, and Chris W. Beggerly by and through their attorney, James L. Martin, are to receive the sum and amount of $208,175.87, with said amount to be paid to their Attorney, James L. Martin.

And it appearing that an Order should now be entered providing for the distribution of the funds deposited in the registry of the Court. The Clerk of the Court is now ordered, authorized and directed to disburse said funds totaling $191,824.13 to the persons and attorneys above named and as directed, and with the checks to be mailed to the addresses given for each and as to the balance of the funds accruing to the Defendant, James R. Beggerly and Chris W. Beggerly, check therefore, in the sum and amount of Two hundred eight thousand, One Hundred seventy-

five & 87/100 ($208,175.87) shall be issued by the Clerk to James L. Martin, Attorney for said Defendants, James R. Beggerly and Chris W. Beggerly, at P. O. Box 15, Jackson, Mississippi, 39205.

ORDERED and ADJUDGED this the 30th day of December, 1982.

/s/ JOHN M. ROPER
UNITED STATES MAGISTRATE

The Above Order Approved for
Entry:

/s/ LYLE M. PAGE
LYLE M. PAGE, Counsel for Defendants
Arthur Baker, Ralph Baker, Walter N.
Wentzel, L. M. Page and Francis
Stanovich

/s/ WYNN E. CLARK
WYNN E. CLARK, Counsel for Defendants
David A. Doherty, Adelaide H. Doherty,
Mrs. A. E. Hurd, Sr., Mrs. Anne H.
Bradley, Mrs. Jane H. Sims, Mrs. Irene H.
Hawley, Alfred E. Hurd, Jr., Louis W.
Hurd, Mrs. Linda H. Smith and Mrs. Faye H.
McCarey

/s/ W. B. JONES
W. B. JONES, Pro Se

/s/ JAMES L. MARTIN
JAMES L. MARTIN, Counsel for
Defendants First National Bank
of Jackson, Trustee of Paul
Chambers Mineral Trust,
J. S. Love, Jr., M. B. Puckett
and Petit Bois, Inc. and James R.
Beggerly and Chris W. Beggerly

/s/ MACK CAMERON
MACK CAMERON, Counsel for Defendant
State of Mississippi

/s/ C. W. FORD
C. W. FORD, Counsel for Defendants
E. J. Delcambre, Ronnie Strahan
and Ellison Hebert

/s/ RUSSELL THOMPSON
RUSSELL THOMPSON, Counsel for
Defendant Fred Lemon

/s/ JACOB D. GUICE
JACOB D. GUICE, Counsel for Defendants
Lou Ann Gilly, Frances Wade Gilly and
Ola Pitalo

/s/ GEORGE MORSE
GEORGE MORSE, Counsel for Defendants
McClellan, Heirs of Carroll E. Williams
and Rooke

/s/ KEITH PISARICH
KEITH PISARICH, Counsel for Defendants
Marlene Gillich and Frank Schenck

/s/ ROBERT M. ACEVEDO
ROBERT M. ACEVEDO, Counsel for Defendants
Raymond Bass, Bartlo Hunt, Anthony J. Bertucci,
Grace Bertucci and Noel J. Skrmetti

/s/ THOMAS J. WILTZ
THOMAS J. WILTZ, Counsel for Defendants
Cornelia Reagan Berry, Johnny & Beverly
Romeo, Grover Graham, Jr., Thomas J.
Wiltz, Margaret Brou, Johnnie Parkinson,
Cosman Eisendrath, Dr. Clay Easterly,
Mr. & Mrs. Donald Santa Cruz, Jerry &
Shannon Covich, Mrs. Bobbye Pringle,
Laz Quave, Mrs. Helen Leonard, A. W.
Covacevich, Naif Jordan, Caroline Bell
(Leader), Louis Fondren, Genevieve
Curtis and Wakeman B. Curtis

/s/ R. L. NETTERVILLE
R. L. NETTERVILLE, Counsel for
Dan E. Breland

Approved as to form:

/s/ JERRY A. DAVIS
JERRY A. DAVIS
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. 1:94cv264RR

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

V.

UNITED STATES OF AMERICA, DEFENDANT

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The Plaintiffs, Chris W. Beggerly, James R. Beggerly, Clark M. Beggerly, Jr., Velma B. Garner, Suzanne Reed and David Reed ("Beggerlys"), move the Court to grant summary judgment pursuant to F.R.C.P. 56(c). In support of their motion, the Beggerlys state the following:

1. This action was commenced on June 1, 1994 when the Beggerlys filed their Complaint and requested that the Court set aside the judgment and the underlying settlement in *United States of America v. Adams, et al.*, Civil Action No. S79-0338(R) (S.D. Miss. 1982) ("*Adams*") and award them damages equal to the fair market value of their property.

2. In the Complaint, the Beggerlys assert ownership of certain property on Horn Island, Jackson County, Mississippi. The property as described in Paragraph 6 of the Complaint was purchased by Clark

M. Beggerly, Sr. at a tax sale in 1950 in Jackson County, Mississippi.

3. In order to prevail, the Beggerlys must prove a valid grant or patent of Horn Island out of the sovereign.

4. The Beggerlys, by expert Affidavit of Dr. Hans Baade, show the following:

a. In 1781, a grant of Horn Island was made by Bernardo de Galvez, Governor General of Spanish Louisiana, to Catarina Boudreau ("Boudreau Grant").

b. The Boudreau Grant is a valid, binding and final grant of Horn Island under Spanish law when made and its validity was subsequently confirmed by treaty between the United States and Spain.

c. The United States by treaty recognized all private grants which were made prior to 1818 and which were valid and binding according to the Spanish law.

5. Accordingly, there is no genuine issue of material fact as to the validity of the Boudreau Grant and the Beggerlys are entitled to summary judgment as to their title.

WHEREFORE, PREMISES CONSIDERED, the Beggerlys respectfully request the Court to enter summary judgment ruling that as of December 3, 1982, the Beggerlys had valid title of their property as described in Paragraph 8 of the Complaint and that the Stipulation and Settlement and the Judgment and Order dated December 3, 1982 are void and of no effect as to the Beggerlys' interest and should be set aside.

This the 15th day of March, 1995.

Respectfully submitted,

CHRIS W. BEGGERLY, JAMES R. BEGGERLY, CLARK M. BEGGERLY, JR., VELMA B. GARNER, SUZANNE REED AND DAVID REED

By Their Attorneys
WATKINS LUDLAM & STENNIS

By: /s/ ERNEST G. TAYLOR, JR.
ERNEST G. TAYLOR, JR.

Ernest G. Taylor, Jr. (MB #7451)
Jim B. Tohill (MB #8234)
Robert E. Hauberg, Jr. (M#8958)
Robert M. Arentson, Jr. (MB #1612)
WATKINS LUDLAM & STENNIS
633 North State Street
P. O. Box 427
Jackson, MS 39205-0427
(601) 949-4900

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. 1:94cv264RR

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT OF CHRIS BEGGERLY

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, Chris Beggerly, who stated on his oath the following:

1. My name is Chris Beggerly. I am an adult resident citizen of Florence, Mississippi and am competent to testify. I have personal knowledge of the facts set forth in this affidavit.

2. I grew up in Rankin County, Mississippi. I left Mississippi to join the Navy in 1944, when I was 18 years old. (I followed my brother Raleigh who had joined the Navy in 1942.) After three years of continuous overseas service in the South Pacific, I returned in 1946.

3. On April 3, 1950, certain properties in Jackson County, Mississippi, were placed on sale at the Jackson County Courthouse in Pascagoula, Mississippi, for delinquent taxes.

4. My daddy, Clark M. Beggerly, Sr., who was interested in making a long-term investment for the benefit of our family, attended the Jackson County tax sale and purchased approximately 626 acres on Horn Island, Jackson County, Mississippi, in the name of his son (my brother), James R. Beggerly. This acreage is described as Lots 1, 2, 3 and 4, Section 27, Township 9 South, Range 6 West; Lots 1, 2, 3 and 4, Section 28, Township 9 South, Range 6 West and Lots 1, 2, 3 and 4, Section 29, Township 9 South, Range 6 West. Also, daddy and A. E. Hurd purchased approximately 225 acres described as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Section 30, Township 9 South, Range 6 West.

5. On July 18, 1960, A. E. Hurd and daddy divided their jointly owned property. Daddy conveyed Lots 5, 6, 7, 8 and 9 to A. E. Hurd and A. E. Hurd conveyed Lots 1 through 4 and Lot 10 to daddy. They drew straws to determine who would get which Lots. In 1961, daddy died leaving his interest in his lots to my mama, Norma A. Beggerly. On March 24, 1971, mama conveyed these same lots to her children Clark M. Beggerly, Jr., James R. Beggerly (Raleigh), Norma B. Reed, Velma B. Garner and me. Subsequently, Norma Reed died leaving her interests to her children, Suzanne and David.

6. If the government had not taken our property, the current interest of each member of the family in the Horn Island property would be as follows:

a. James R. Beggerly owns a 100% interest in Lots 1, 2, 3 and 4, Section 27, Township 9 South, Range 6 West; Lots 1, 2, 3, and 4, Section 28, Township 9 South, Range 6 West; and Lots 1, 2, 3, and 4, Section 29, Township 9 South, Range 6 West. He also owns an undivided one-fifth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

b. Chris W. Beggerly owns an undivided one-fifth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

c. Clark M. Beggerly, Jr. owns an undivided one-fifth interest in Lots 1, 2, 3, 4, and 10 of Section 30, Township 9 South, Range 6 West.

d. Velma B. Garner owns an undivided one-fifth interest in Lots 1, 2, 3, 4, and 10 of Section 30, Township 9 South, Range 6 West.

e. Suzanne Reed owns an undivided one-tenth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

f. David Reed owns an undivided one-tenth interest in Lots 1, 2, 3, 4 and 10 of Section 30, Township 9 South, Range 6 West.

7. I had nothing to do with the purchase of that property, but after my daddy died in 1961, I got involved with the management of the part that my mama owned. Later on, I started working with Raleigh closely to help him deal with his problems with his property too. In the Navy they called him Jim and he has continued to be called Jim since, but I grew up

calling him Raleigh and still do. Raleigh and I have always been close. As boys we fought with each other all the time, but we always fought together against anybody else and still do. Raleigh is the cautious scholar. He managed to continue his education and become an engineer. I never got beyond a high school. Raleigh is careful and thorough. I am hot-headed and sometimes go off half cocked. We are very different, but when the chips are down, we pull together. Therefore, when this thing got to be a tough go, and Raleigh couldn't take the pressure any longer, he asked me to get involved and get out front to help him. I was glad to do it.

8. As I was saying, after my daddy died, I started looking after the family interest and finally, my mama gave a deed to each of the children dividing it up among us. My brothers and sisters agreed that I ought to manage their interests and eventually Raleigh and I just worked together on this without worrying about ownership.

9. After the Congress adopted the Gulf Island National Seashore law to create the park, Mr. Creighton contacted Raleigh and me and told us that they were going to arrange for a boat trip to go out to the island and they wanted to take us to our property along with Mr. Ed. Turner, the government's land appraiser, and other owners. We accepted the offer and when we got out to the island, Mr. Turner, showed us where a marker was on the East end of our property and said that was where our property began. He told us that they would let us off there and come back and pick us up at the end of the day about four miles west of that point where we would find another post on the west end of our property. We spent the

day on the island walking from east to west. At the appointed time, the government boat showed up at the west end where we had located our marker and we got back on the boat and returned to the mainland. I enjoyed talking to the boat captain who told us about the Waters family who had lived on the Island for several generations and built houses on the Island. He told us about folks bringing sweet milk in from the island to sell.

10. Sometime after that, Mr. Creighton got in touch with us and offered to buy the property. He talked to me about the property we bought in my daddy's name and talked to Raleigh about the property that was in Raleigh's name, but he made the same offer to both of us and we were both treated about the same. I remember that I asked Mr. Creighton to give me a copy of the government's appraisals for the land and the minerals so that I could look it over and make my own judgment on whether the values were right or hire my own appraiser and have him look at them. Mr. Creighton assured me that they had appraisals for both the land and the minerals, but he refused to give me a copy of them. This became a sticking point with us and I kept demanding but never succeeded in getting a copy of the appraisals. At some point I made a counter-offer of $2,000 per acre, but he showed no interest in negotiating. After several meetings and telephone calls back and forth, our talks finally broke down and I didn't hear any more from Mr. Creighton.

11. I am attaching as Exhibit "A" the map which Creighton gave me during our first meeting. This map was used as the reference map throughout our negotiations and when the lawsuit was filed. Raleigh's parcel 02-133 is 626 acres, not 438.98 acres

as shown on the map. Throughout negotiations with Creighton and the other government representatives 626 acres has been acknowledged as correct.

12. A little bit later on, a Mr. Kippes got in touch with me and he made similar offers. Mr. Kippes' deal wasn't any better than Mr. Creighton's deal, so we didn't get anywhere. I continued to insist on getting to see their appraisal and also asked if I could have an appraiser hired by me go to the island with their appraiser. They refused to accept that proposal. They were adamant that they had done an appraisal and that nothing else needed to be done and that they were going to pay me their price and that was that.

13. Finally, a third guy got in touch with us, a Mr. Burton Winkle, who told us that they were having a big ribbon cutting concerning the park and that they wanted to get at much property purchased as they could before the ribbon cutting which would be attended by the Secretary of the Interior. We agreed to meet with him at a restaurant on the coast where Highway 49 meets Highway 90 and spent three or four hours in a meeting with Mr. Winkle talking about the park property and the background and various details concerning the title. We had employed counsel to assist us with resolving questions about the patents. As I recall, one of the problems the lawyers had is that since the courthouse had burned down in Pascagoula, all of the old original records were gone and there were some question about these patents which we had gotten that were issued to Indians.

14. At any rate, after three or four hours of talking and going back and forth, a deal was reached for them to buy Raleigh's part of the property for, I believe,

$157,500. Raleigh signed a contract to sell and I witnessed it. Mr. Winkle wrote out a check while we were there and told us that as soon as it cleared his acquisition account, we would get our money. The check and the deal related only to Raleigh's property and not to the other family property. Mr. Winkle was primarily interested in buying the bigger pieces of property and having that closed out in time for their ribbon cutting ceremony. Before going to this meeting I had talked with Raleigh about holding out, but he was under a lot of pressure and had decided that he needed to get rid of this problem and not have to face the on-going bother that was caused by dealing with the government with this land. As I said all along, we have always worked together and once I realized that's what was best for him, then that suited me. It doesn't matter anyway since the government broke the contract and refused to deliver his check.

15. Going back to the time period after we took our boat ride and first met with the government folks, about that time, I started getting calls at my office in Jackson from various people who were asking my permission to use our land for recreational purposes, fishing and what have you. They knew where it was and that we owned it. Apparently, once the new park was created, the government began patrolling the island and running people off. Many of these people had fished and gathered shrimp and oysters on and around the island for several generations and they were very upset that the government was running them off. I gave a number of people written permits saying that could use our property. I had several folks tell me that the guards would accept a written note from me giving them permission to be on the

land. I made a point of telling people that they were welcome to go out there as long as they left it cleaned up and didn't cause any trouble. I remember having one man tell me that he liked to catch shrimp near our property and that if I would come down on Thursday when he had his day off, he would give me a sack of shrimp. Other people called back to thank me and I don't know how many people I talked to but there was a substantial number of folks who called me over a period of several years after the park was first created.

16. Sometime in 1979, Federal Marshall Benny Crumpton came into my office and served the papers on me, saying that the United States government was suing us to quiet title. I knew Benny since we parked company cars in the same parking lot the government used. He always teased me about wanting to serve papers on me someday, but neither one of us expected that he would ever get to do it.

17. At that time, I was extremely busy at my work. I was transportation superintendent for Mississippi Power & Light Company supervising the operation of over 700 vehicles; one of them was broke down, turned over, on fire or stole any hour of the day. I simply did not have time to fight a lawsuit. Therefore, I got in touch with a Mr. Tobin, whose name I had gotten from some source. I understood that he was one of the top people in the Department of Interior and that he had authority to work out a settlement. As it turned out, I had a conference in the D.C. area that I needed to attend and we set up a time to meet that tied in with my conference dates. When I got to Washington and concluded my other meeting, I went to Congressman Cochran's office and he had someone take me to Mr.

Tobin's office. When I got there, I found out that Mr. Tobin was not present; he was refereeing a tennis match that afternoon. However, the receptionist assured me that there were other people set up to meet with me and that they could take care of my business. We then sat down and met with three or four other people from that office who, as it turned out, knew absolutely nothing about my business. I left this meeting very upset and frustrated, feeling that I had totally wasted my time and had accomplished absolutely nothing.

18. Somewhere along in here, I heard about John Stocks and his interest in Petit Bois. I got in touch with him and he set up a meeting with his lawyer, Jim Martin, and we ended up hiring Jim Martin to represent us. Jim worked with Raleigh on doing research to locate patents and grants. As we got close to trial I thought we had a good case, but Martin told us that we would not be able to win because we could not prove that we had good patents. The government came up with some money and everbody decided to settle. I didn't want any part of it, but finally had to agree when my lawyer told me I had no choice.

19. Before we left the courthouse Steve Herman, the government's lead attorney asked me to sign something. I told him I would sign his document if he would give me a letter saying that the settlement money we would get was not for the purchase of our land. He said he would do that since the government did not believe that we owned any land. Several months later I received the letter attached as Exhibit "B".

20. After the settlement, we went home disgusted with the whole affair. I knew the sensible thing to do

was to just walk away from it and I tried to do that but just couldn't. There was just too much evidence of private ownership and use on that island. I had to keep looking. So I started making phone calls and writing letters to anyone and everyone who I thought might help me. I also learned about Freedom of Information Act requests and started using them.

21. Along the way I wrote letters to Presidents Carter, Reagan and Bush; Secretaries of the Interior, Andrus Watts and Lujon and many other federal and state officials and employees. From time to time someone would try to be helpful, but most of the time they told me that since I didn't have a patent, there was nothing they could do. I got a huge stack of papers from the FOIA requests which helped answer some questions, but for the most part I was going in circles.

22. Finally, someone told me that I needed to hire a genealogist to do research at the National Archives in Washington, D.C. I got in touch with the genealogical society headquarters and they sent me a book. I had the good fortune of selecting Mrs. Edith Axelson from the list of names in the Washington, D.C. area and asked her if she would be willing to do research for us. She said that she would and seemed interested.

23. She told me that she had started doing genealogical work late in life and loved her work. I believe she was over seventy years old then. I put her in touch with Raleigh since he had had so much experience doing research at the various archives. He followed up with giving Mrs. Axelson directions on what we were interested in and after several weeks of work she produced the grant we had been looking

for, the grant from Governor Galvez to Catarina Boudreau.

24. After receiving the Boudreau grant, I took it to Dr. Patricia Galloway at the Mississippi State Archives. I had gotten to know Dr. Galloway, since she had testified, or given a deposition in the court proceedings, concerning the absence of a grant on Horn Island. I had talked with her when I did research in the state archives and knew that she had expertise in these old grants. When I showed her the grant, she said that it looked like it was a good grant, but that she was not an expert on the Spanish grants.

25. I sent the grant to the Bureau of Land Management and told them that since we now finally had a grant of Horn Island, I wanted them to issue my patents on the land. After some wait, they sent me a letter, a copy of which is attached as Exhibit "C". As is clearly stated in the letter, they told me that my grant didn't make any difference, and that they had thoroughly researched the matter and there was no need to take it any further. Ultimately, they told me that if I didn't like it, I could file a lawsuit.

26. At this point, I started looking for legal counsel and ended up hiring our present legal counsel who then guided us toward finding an expert who could determine whether or not the grant was valid and what its legal effect was. I assisted in this effort by making various contacts and phone calls looking for a qualified expert and after talking with several different knowledgeable people in New Orleans and other locations, we were assured that the best expert in the field was Dr. Hans Baade at the University of Texas. Our counsel got an introduction to him and

made contact. He was very interested in our case and assured us that he was able to do a complete analysis of the grant. We hired him and have now received his opinion which states that the grant is a valid grant.

27. After getting Dr. Baade's opinion and having the opportunity to talk with him in person, we began making plans to file a lawsuit and, ultimately, we filed this suit.

28. I am now retired, but during most of this time period I was working hard, around the clock at times, and fighting this battle in my few spare moments has been tough. I have never objected to selling my land. I know the government has the right to condemn it and take it for a park. All I want is to have a fair hearing on my title and be paid a fair price for my land.

This, the 14th day of March, 1995.

Respectfully submitted,

/s/ CHRIS W. BEGGERLY
CHRIS W. BEGGERLY

Sworn to and subscribed before me on this, the 14th day of March, 1995.

/s/ GWEN B. ALLEN
Notary Public

My Commission Expires:

My Commission Expires July 16, 1995

[DOJ Seal Omitted] U.S. Department of Justice

MEF:DFS
90-1-5-1867

Washington, D.C. 20530

March 21, 1983

Mr. C.W. Beggerly
Route # 3
Box 235A
Florence, Mississippi 39073

Dear Mr. Beggerly:

Re: United States v. Dr. Andrew J. Adams, et al.,
Civil No. 79-0302, USDC, S.D. Miss.

This letter is in response to your request for clarification of the settlement agreement in the above-referenced case. The position of the United States throughout the litigation, as evidenced by the pleadings and motions submitted to the Court, was that title to the disputed property remained in the United States.

The settlement agreement was filed with the Court and is a matter of public record. Our interest in the settlement of the case was to avoid what promised to be a long and costly litigation, and in no way is an acknowledgement by the United States that your

title was valid. The agreement does not purport to convey land, as you could not sell what you did not own.

I hope I have been of assistance.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By: /s/ STEVEN A. HERMAN
STEVEN A. HERMAN
Attorney

UNITED STATES DEPARTMENT OF THE INTERIOR

[seal omitted] [graphic omitted]

BUREAU OF LAND MANAGEMENT
Eastern States
7450 Boston Boulevard
Springfield, Virginia 22153

IN REPLY REFER TO:
2000(020)SLF

NOV 20 1992

Mr. Chris W. Beggerly
200 Beggerly Place
Florence, Mississippi 39073

Dear Mr. Beggerly:

This is in response to your letter of July 14, 1992, and telephone conversations with the Bureau of Land Management (BLM) personnel and the Solicitor's Office. We apologize for the length of time it has taken us to respond, but we wanted to ensure that we researched all available information so we could adequately respond to your concerns.

In your letter you state that you are applying for patents covering land in Jackson County, Mississippi. You specifically request "Patents covering all of Horn Island in which [you] have a vested interest." Please be advised that BLM is required to follow

the statutes passed by Congress and the appropriate regulations published in the Code of Federal Regulations (CFR). Furthermore, all of Horn Island is currently within the Gulf Islands National Seashore, and is therefore under the jurisdiction of the National Park Service (NPS) and not the BLM.

After thoroughly researching your contentions, we find that you do not a have valid claim to land described as Lots 1, 2, 3, and 4, Section 27, Lots 1, 2, 3, and 4, Section 28, Lots 1, 2, 3, and 4, Section 29, Lots 1 through 10, Section 30, all in T. 9 S., R. 6 W., St. Stephens Meridian, Jackson County, Mississippi on Horn Island and, therefore, are not entitled to ar patents to land on Horn Island. The reasons for our decision are:

1. <u>The land has never been patented out of Federal ownership.</u>

First and foremost, Horn Island came into the United States (U.S.) in 1803 as part of the Louisiana Purchase. In 1800, Spain ceded to France all of its Louisiana Territory under the treaty of San Ildefonso. This land was then ceded to the U.S. by France in 1803 and is now known as the Louisiana Purchase. The Louisiana Purchase included all land south of 31 degrees north latitude, with an eastern boundary at the Perdido River—now the boundary between the panhandles of the States of Florida and Alabama—and a western boundary running diagonally northwest through what is now the State of Louisiana. Viewing a map confirms that all Mississippi barrier islands, Horn Island included, were part of the Louisiana Purchase.

We have not found any patents to any private parties or municipalities in our current research, nor were any such patents found during the exhaustive research performed in preparation for and during the litigation initiated in 1979. This fact forced the National Park Service (NPS) to cancel its offer to purchase land ostensibly belonging to you. After nearly consummating a deal with you, the NPS found from its title company that the land in question had never been patented out of Federal ownership. The land, therefore, belonged to the U.S. and the NPS had to back out of the deal. As for the authority of the NPS negotiators, they were authorized to purchase land for the NPS, but only if the seller had good title. In this case, you could not convey good title, therefore the negotiators technically were not authorized to enter a deal with you.

As the patents you claim were issued incorrectly, these are legitimate and legal patents issued to the named individuals for land in the Chickasaw Meridian. These lands were subject to sale at the land office in Pontotoc, Mississippi. The patents you are claiming as having been issued for land on Horn Island are valid patents for land in northeastern Mississippi. A thorough search of the tractbooks at our office in Springfield, Virginia, verifies this. The three patents to the three named Indians are recorded in the tractbooks located in Springfield. These tractbooks also show that no patents were ever issued for the lands you claim on Horn Island. Because no patents were issued, the land was still in Federal ownership at the time you thought you were purchasing it and it is still in Federal ownership today.

You have also pointed out the seeming inconsistency of the government's position to condemn Horn Island in 1943. You argue that there would be no need to condemn Horn Island if the government already owned it. However, the government does not waive any of its rights by filing a condemnation action; the initiation of a condemnation action constitutes neither the admission of any rights in others nor the waiver of any rights in the government. In this case, due to the exigencies of World War II, the Federal Government needed the land immediately and the quickest way to obtain it was to petition for condemnation. Condemnation allowed the U.S. to gain immediate possessory interest in the land without engaging in time-consuming purchase negotiations or litigation to determine what interests, if any, were held by individuals residing on the land.

2. The 1982 judgment and settlement agreement quieted title in the U.S. and disposed of your claim.

Even if there had been a question as to whether Horn Island had ever been patented out of Federal ownership, the question of ownership was finally resolved by the 1982 judgment in the quiet title action. Because of the uncertainties surrounding your title and that of other affected "landowners," the U.S. brought a quiet title suit in 1979. You were a named defendant in that suit. The suit was not brought in an adversarial spirit, but rather to try to clear up the uncertainties and to finalize ownership in the rightful parties. The case was settled and title to all of Horn Island was quieted in the U.S. You agreed

to the settlement and received a goodly sum of money to compensate you for your claimed interest in the land.

The 1979 litigation was the perfect forum in which you could have presented your evidence of ownership. Extensive research had been done by the government and presumably by your attorney, and through the discovery process each side was aware of the other's arguments and evidence and an unbiased decision maker would have made the final decision. However, instead of pursuing this opportunity, you chose to settle the case and accept money in lieu of title. The court's judgment and the settlement agreement between you and the government terminated any interest you may have had in the land on Horn Island and conclusively ends the question of its ownership. As part of the court's judgment it was "Further ordered that all defendants and their heirs are permanently enjoined from asserting any adverse claims to the subject property described in the Complaint. . . ." This judgment is legally binding on all parties.

3. The Spanish land grant was not properly confirmed.

Although the 1982 judgment disposes of your claim to land on Horn Island, you state you have a Spanish land grant which was not considered during the litigation and which changes the posture of the case. We are aware that there is a 1781 Spanish grant of Horn Island to one Catharine Beaudreaux (with various spellings). We are also aware that the 1819 treaty between Spain and the U.S. states that all such grants made prior to January 24, 1818, would be

"ratified and confirmed to the persons in possession." However, Mrs. Beaudreaux's claim was never properly confirmed. As the U.S. spread westward acquiring various lands, land commissions were established throughout each new territory. The purpose of these commissions was to aid the citizens in filing their land grants for confirmation from Congress. If a claimant presented sufficient evidence of a claim to the proper commission, the commission would recommend confirmation and in most instances Congress would confirm the claim. Without this confirmation, the BLM is unable to recognize any private land claims or land grants in the present day and age.

We have searched all known sources for information on confirmation of Mrs. Beaudreaux's grant and have found nothing. The only confirmation of any private land grants for a family named Beaudreaux (spelled Budreux) was in the State of Alabama. Since Mrs. Beaudreaux never received confirmation of her claim, title to her land remains vested in the U.S.

4. <u>At the time of the court settlement, your claim had been diminished.</u>

It appears that by the time your claim to the land reached the court, some of your claim had been transferred to Mr. A. E. Hurd. On July 18, 1960, Clark M. Beggerly transferred by Quitclaim Deed Lots 5-9 of Section 30 to Mr. Hurd. As to your own personal claim to these lands, you, Mr. Beggerly, did not have a claim until your mother conveyed to her children Lots 1-4 and 10 of Section 30 in February 1971. Therefore, we believe that you were fairly compensated by your 1982 settlement for $208,175.87,

which was $52,175.87 more than the NPS offer which you were wiling to accept.

5. <u>Chronology of Federal surveys</u>

There is an extensive history of Federal surveying activity on Horn Island which further substantiates a continuing Federal ownership. Additionally, by the time of the quiet title action brought by the Federal government, Horn Island had shifted through erosion and accretion. This is documented through surveys done by the BLM Cadastral Survey Division since 1824.

The earliest locatable survey of Horn Island was done by Deputy Surveyor Elihu Carver in 1824. Mr. Carver initially traversed the exterior limits of Horn Island in its entirety. The survey done by Mr. Carver did not divide the island into sections.

In 1846, Deputy Surveyor Henry Hamblin surveyed the island and subdivided the island into fractional sections. No lots or tracts were used at this time. The first survey to include lots within each section was the supplemental plat of 1907 survey. At this time, Sections 27, 28, and 29 were each further subdivided to include Lots 1, 2, 3, and 4 in each section; while Section 30 was subdivided to include Lots 1-10.

In 1928, Wesson Cook, U.S. Transitman, conducted a dependent resurvey of Horn Island in T. 9 S., R. 5, 6, and 7 West. At the time of this survey, a certain amount of accretion had taken place on the northern and western margins of the island, while the southern margin had eroded. Because of this fact, those sec-

tions remaining in Federal ownership were each reallotted to accurately reflect the changes in area. The areas of those lots affected by erosion were shown in two parts, "A" denoting land areas, and "B" denoting water areas, and were computed proportionally according to the total areas of the original subdivisions. Due to the accretion on the north side of the island, Mr. Cook performed an extensive survey in Section 25, T. 9 S., R. 6 W., and Sections 18 and 19, T. 9 S., R. 7 W. He also surveyed Sections 13, 23, and 24 of T. 9 S., R. 8 W., which had formed entirely by accretion.

In 1979, Cadastral Surveyor, Stephen G. Kopach, conducted a dependent resurvey of Horn Island, Sections 25, 26, 27, 33, 34, 35, and 36, Township 9 South, Range 6 West. At the time of this resurvey, Horn Island had eroded to such an extent that, of these sections, only a portion of sections 27, 33 and 34 remained. The existing sections were again reallotted to accurately depict dependent resurvey.

6. Further evidence of Federal ownership

Another indication of Federal ownership is the reservation of a portion of Horn Island for military purposes by presidential order of August 30, 1847. Since then Horn Island has been reserved for military purposes on several occasions. Clearly, if the land had been privately owned, it could not have been reserved for military purposes.

In fact, the *Federal Register* notice dated May 20, 1958, creating the Horn Island National Wildlife Refuge, revokes the 1847 reservation and states that

"The lands were transferred to the control of the Secretary of the Interior for disposition under the act of July 5, 1884, by Executive Orders of October 25, 1895, and August 25, 1900." The notice goes on to revoke other Executive Orders dealing with Horn Island from 1900 and 1906.

There is an abundance of evidence of Federal ownership of Horn Island through the years. Unfortunately, the tax assessor of Jackson County ignored this evidence and "sold" you land which was not his or hers to sell as this land was and is still in the possession of the Federal Government.

7. Ownership of minerals is also Federal.

Since we contend that you never owned any land on Horn Island, we accordingly contend that you never owned any minerals either. However, if you ever had a claim to any minerals on the island, it was renounced in 1982 when you signed the settlement agreement with the U.S. Government. The December 3, 1982 judgment and order of U.S. Magistrate Roper clearly states that title was quieted in the U.S. "with regard to all lands *and interests in lands*" on Horn Island and that "the United States has title in fee simple absolute to . . . the subject property." "Title in fee absolute" includes title to the surface and subsurface, including any minerals.

Conclusion

To summarize, the BLM finds that you do not have a valid claim to any land or minerals on Horn Island and that, therefore, you are not entitled to the patents you have requested. The land in question is owned by the Federal Government and has been since 1803, when it came into the U.S. as part of the Louisiana Purchase. Any claim you may have had was disposed of by your decision to settle the quiet title action in 1982. There is no affirmative evidence that the Spanish land grant you provided was ever properly confirmed and without such evidence the 1982 judgment stands and BLM is without power to issue you a patent.

When Federal land is sold by the BLM it is sold pursuant to Federal law, not State law or county ordinances. Individual states and counties in each state do not have authority to sell Federal land. Therefore, Jackson County did not have authority to sell you any land on Horn Island as this land was and is still in the possession of the Federal Government. In 1950, the Jackson County Tax Assessor may have represented to you that he had authority to sell you land on Horn Island, but he was wrong. Your recourse is not against the Federal Government, but against Jackson County. Barring any limitations problem (i.e., your claim may be too late), you might wish to seek relief against the county.

We have thoroughly researched your claims to the land on Horn Island and both management and staff have spent countless hours reviewing the facts in this

case. We have also been working closely with the Solicitor's Office, which concurs in our decision and in this letter.

It is our position that the BLM has done all that we can to assist you in finding answers to your lingering questions. At this point, we do not feel there is anything else we can do to assist you and this letter represents our final decision in this matter. If you still feel you have been wronged, your only recourse is through the U.S. judicial system.

Sincerely,

DENISE MERIDITH

DENISE MERIDITH
State Director, Eastern States

cc: Senator Thad Cochran
United States Senate
Washington, DC 20510-2402

Senator Trent Lott
United States Senate
Washington, DC 20510-2403

Honorable G. V. "Sonny" Montgomery
House of Representatives
110-d Airport Road
Pearl, Mississippi 39208
Attn: Mr. Dan Kimbrough

Wilson Carroll
Assistant District Attorney
State of Mississippi
P. O. Box 220
Jackson, Mississippi 39205

Christina Clark
Department of the Interior
Office of the Solicitor

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action Number: 1:94cv264RR

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT OF JAMES RALEIGH BEGGERLY

STATE OF MISSISSIPPI

COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, James Raleigh Beggerly, who stated on his oath the following:

1. My name is James Raleigh Beggerly. I am an adult resident citizen of Axis, Alabama and am competent to testify. I have personal knowledge of the facts set forth in this affidavit.

2. I grew up in Rankin County, Mississippi. I left Mississippi to go into the military service in 1942. After over three years of continuous overseas service, I returned in 1946. After my return, my father asked me to buy property with him on Horn Island. I told him okay but not to go above a certain amount. My father came back later and told me I owned three miles on Horn Island. My father bought two tracts, one of which was in my name.

3. I was called to service again during the Korean War from January 1951 to 1953 for 23 months.

4. While I was in Korea, my father employed an attorney named H. G. Rowland in Lucedale, Mississippi to clear up any question about our title in the Jackson County Chancery Clerk's office. Mr. Rowland had gotten patents and they had been recorded, but there as a question among people at the courthouse about the patents which were issued in 1840. Mr. Rowland filed a suit to clear up questions about these patents, but we decided not to follow through with it at that time.

5. I always assumed that we had a good title. We paid our county taxes each year, including our assessment for the Pascagoula school district and planned to keep the property as a long-term investment.

6. In March 1959, I noticed an article in a local paper about certain properties on Horn Island being transferred from one government bureau to another. To be sure there was no question about any of my property being involved, I wrote the Manager, Bureau of Land Management, Russelville, Arkansas listing my property by lot, section, township and range and asked if there was a conflict between the land I owned and the land listed as property of United States. I received an answer that "none of the tracts you listed in your letter to this office show as public domain prior to the withdrawal by the Fish and Wildlife Service."

7. In 1971, President Nixon signed into law a bill which authorized acquisition of land for the Gulf Island National Seashore. Shortly thereafter, my brother, Chris Beggerly, and I were invited to go on a

boat trip to the island along with other property owners. This trip was arranged by the Department of Interior. The boat was the Sea Queen captained by a Mr. Ralph Baker at Biloxi Yacht Basin. Other land owners, government representatives and Ed Turner, a land appraiser employed by the Department of Interior, were all on board. The government representatives pointed out where our property began on the island and dropped us off at that point with the understanding that they would pick us up approximately four miles down the beach where our property ended. We spent most of the day on the island looking at the property and then were picked up at the far end as planned.

8. In September 1971, I was contacted by Mr. John S. Creighton, Land Acquisition Officer for the Department of Interior. We discussed the government's desire to establish the Gulf Island National Seashore Park, and the need of the government to acquire private property on the island. He showed me copies of title insurance information prepared for the Department of Interior by the Lawyers' Title Insurance Corporation and the Mississippi Abstract Title and Guaranty Company which conclusively showed the subject property, Sections 27, 28 and 29, Township 9 South, Range 6 West titled to James R. Beggerly, and certain lots of Section 30, Township 9 South, Range 6 West as being titled to my father, C. M. Beggerly, Sr., deceased; thus owned by his surviving heirs. I asked for copies of these titles and Mr. Creighton later sent copies to me. Mr. Creighton said the Department of Interior had the property appraised, and he made me an offer of $156,000 to purchase the land "fee simple." In this conversation, Mr. Creighton informed me a

mineral appraisal had also been made and the minerals had been determined to have a value of "zero." I informed Mr. Creighton I was in no way prepared to accept their valuation of mineral rights as "zero" value. After a brief exchange between us, Mr. Creighton handed me a contract to sign if and when I changed my mind. He then gave me a very sage piece of advice I shall never forget, to-wit: "Mr. Beggerly, there is something you need to know. In the end, we will have your property and it will be on our terms and our conditions. We will either wear you out, break you, or both."

9. Subsequently, I was contacted by Mr. Edward H. Krippes from the Department of Interior who simply repeated Mr. Creighton's offer. Therefore, we did not make any progress.

10. In 1975, a Mr. Burton Winkle contacted me and informed me that he had replaced Mr. Krippes. In the interim, I had employed an attorney to advise me regarding the patents on the property. When Mr. Winkle contacted me, I advised him that there might be a problem and, therefore, I was not interested in attempting to convey title until I could get it cleared up. He assured me that he was not concerned about any title problem and we agreed to meet on October 22, 1975, at a restaurant in Gulfport. My brother, Chris Beggerly, and I, along with our wives, met with Mr. Winkle and discussed the sale of the property. I had become interested in selling the property at this time since I was under intense pressure at work and needed to get this continuing bother out of my way so that I could concentrate on my work. At that time, I was Assistant Plant Manager of Barry Electric Generating Plant in Mobile, Alabama, supervising ap-

proximately 460 employees. I felt that I could not continue to negotiate with the government concerning this property and meet my other responsibilities to my job and my family. Even through Chris continued to feel very strongly that we should not sell, we agreed that because of my special concerns, we would negotiate the best deal possible.

11. After several hours of discussion with Mr. Winkle, I accepted his offer and a contract was signed for me to sell my property. Although Mr. Winkle assured me that they had no concern about my title, he asked me to give him my attorney's opinions concerning the patents and I agreed to do so. I left the table understanding that I had a firm deal and that I would sell my property. Although I was not happy with the terms or how I had been treated, I simply felt that I had to unload this burden at this time. Mr. Winkle wrote out a check for $157,500 and told me this would tie up funds, but he had to have the letter concerning the patents from our attorney before he could close the sale. Shortly thereafter, I received a letter from the government confirming that we had made a binding contract. Then on March 22, 1976, after hearing nothing from the government and receiving no money, although I had been promised prompt payment, I received a letter from Mr. Winkle advising that the contract had been cancelled and expressing his sympathy.

12. After receiving the letter from the Department of Interior that they were cancelling the contract to purchase my property, I heard nothing further from the United States concerning its interest in purchasing or otherwise. Therefore, I continued to pay taxes on the property and assumed that I would not need to

bother with the government any further. I did make a diligent effort to try to learn exactly why the government had reneged on its contract, but I was totally unsuccessful in that regard.

13. On September 25, 1979, a federal marshall showed up at my house and served me with a summons from the United States government. The complaint attached to the summons stated that the government had sued me to quiet title on my property. The government was now saying that I had no title at all and that they were taking the property without compensation. This would have been bad enough, but at the time the marshall showed up, I was trying to dig out from the disaster created by Hurricane Frederick. I had four trees down on top of my house when the marshall arrived. Therefore, I directed him to deliver the papers to my wife. Little did I know that another storm was brewing.

14. After I got over the initial shock that the government was suing me, I got with my brother, Chris, and we began to develop a strategy for a defense. We hired a lawyer and also began to do research concerning the patents. We also looked into the existence of other bases for our title including foreign grants from other governments. While I am not a historian or an archivist, I decided to learn how to do historical research on my own to support the efforts of our attorney. I personally did research in the chancery clerk's records in Mobile, Alabama, looking at the early Spanish land title records. Subsequently, I looked at the Mobile County Courthouse records in what is known as the Spanish translated records. My wife and I did research in Montgomery, Alabama, at the Montgomery Archives. My wife and I also went to

Washington, D.C. and did research at the National Archives in D.C. and at the BLM office in Suitland, Maryland. We also did research in New Orleans at Loyola University and at a Spanish archive in New Orleans. Also, the wife of one of my employees, Gloria Wier, learned about my efforts and became interested in assisting me. She did independent research at a number of places including the Archives of Mobile County and Mobile City, the Jackson County Public Library in Pascagoula, Mississippi, the library at the University of Alabama and at a college in Pensacola. She and her husband also did research at the National Archives in Washington, D.C. and met with Mr. William Dorasavage. I was in communication with our attorney, Jim Martin, throughout this time period exchanging information and documents with him.

15. When the court date came up, we were interested and willing to go forward with our lawsuit, but our counsel advised us that because we had not been able to come up with the necessary patent or grant, we would not be able to win. The court had, based on the evidence before it, determined that the Louisiana Purchase controlled and I realized that we did not have any valid patent or grant which had been made out of the United States government after the Louisiana Purchase. I understood that we were in a bad situation. Nevertheless, Chris and I avoided settling the lawsuit until our attorney told us that everyone else was settling and we really did not have any option. At that time, we told him that we would not be willing to convey our title. Our attorney did whatever negotiating was done. We had no involvement in that and he ultimately told us that it was a done deal and that it was over. Therefore, we packed up and went

home somewhat confused and upset about the ordeal. At some point later, we received our settlement check for compensatory damages.

16. After we got our wind back, we decided that we would keep going and whatever the legal consequences were, we would somehow prove that we had a valid title. For the next several years, the primary effort that was made was made by my brother, Chris, who began contacting anyone and everyone, particularly government officials to gain a foothold and find a new direction for us to take. He pursued Freedom of Information Act requests and other efforts and kept me fully advised as he went along. Finally, in 1991, he identified a genealogist in Washington, D.C. who he believed could help us. Her name was Edith F. Axelson. Once he had contacted Mrs. Axelson, given my extensive research, he asked that I talk with her and give her direction on the background of what we had done and what we wanted her to do. I had become convinced that the most likely source of a grant would be from the Spanish government during the latter part of the Eighteenth Century when Spain had sovereignty over the area. Therefore, I asked Ms. Axelson to do research at the National Archives looking for Spanish grants during this time period. We agreed upon terms and she pursued her research which extended over several weeks. She later advised me that she had found a Spanish grant of Horn Island and forwarded to me the document which we now refer to as the Boudreau Grant.

17. After we received this grant which appeared to us to be a complete grant of Horn Island, we realized that we did not have the expertise to determine the legality of the document and, therefore, we employed

legal counsel and began an effort to identify experts who could help us.

18. My brother, Chris, got in touch with the Mississippi Archives and a Dr. Galloway who had testified in the original trial. She was encouraging, but stated that she was not a fully qualified expert.

19. We then contacted an expert in New Orleans named Mr. William D. Reeves who did some historical research. After talking with Mr. Reeves and several other experts, we learned that Dr. Hans Baade at the University of Texas Law School was a preeminent expert on Spanish grants. We employed Dr. Baade, who issued an exhaustive opinion finding that the Boudreau Grant was a valid grant. We then filed our lawsuit to vindicate our rights.

20. I have visited the courthouse in Pascagoula on several occasions since this came up and on my most recent visit I obtained certified copies of our tax deeds from the land records. I also obtained a copy of the map which was used for preparing the descriptions in our tax deeds. A copy of said map is attached hereto as Exhibit "A."

21. Chris and I have made substantial personal and economic sacrifice over the years in regard to this matter and, of course, I would like to see us properly compensated if we are entitled to it. However, my primary objective, after serving in combat in two wars for this country and after enjoying the privilege of a good life in peace time, is to do my part to see to it that our government respects private citizens and their rights.

This, the 9th day of March, 1995.

Respectfully submitted,

/s/ JAMES R. BEGGERLY
JAMES RALEIGH BEGGERLY

Sworn to and subscribed before me on this, the 9th day of March, 1995.

/s/ GWEN B. ALLEN
Notary Public

My Commission Expires:

My Commission Expires July 16, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. 1:94cv264RR

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT OF EDITH F. AXELSON

STATE OF VIRGINIA

COUNTY OF FAIRFAX

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, Edith F. Axelson, who stated on her oath the following:

1. My name is Edith F. Axelson. I am an adult resident citizen of Fairfax County, Virginia and am competent to testify. I have personal knowledge of the facts set forth in this affidavit.

2. I am a certified genealogical record specialist. This means that I do research in original and published records, understand all genealogical resources and provide detailed information concerning the contents of the records examined. I have twelve years experience doing record research. I have extensive experience doing research at the National Archives in Washington, D.C.

3. Early in March 1991, Mr. Chris Beggerly contacted me and asked if I could assist him with doing research regarding evidence of land titled to Horn Island off the Gulf Coast of Mississippi. After agreeing upon terms, I began doing my research. I went to the National Archives in Washington, D.C. and, with the assistance of staff, identified all files which might contain evidence of land grants in this area which were made in the late 1700s. While I do not remember the exact number, I believe there were approximately seventy-five filed identified. I then began methodically going through each file. After spending substantial time over a period of several weeks reviewing these files page by page, I located the Boudreau Grant documents, which are attached as Exhibit A.

4. These documents are on file in the Civil Records Branch of the National Archives in Washington, D.C., in Item Number 126, Volume 203, RG 49, Division "D" at pages 361-364. They are also found in a book of abstracts, RG 49, Division "D", Number 338, Volume 229, reference under Number 6, line item 51. Upon finding these records, I forwarded them to Mr. Beggerly.

5. Last week, Mr. Jim Beggerly asked that I obtain certified copies of the Boudreau documents. On March 8, I returned to the National Archives, located the Boudreau documents in the files where I originally found them and requested copies. Unfortunately, unless I can persuade the staff to expedite this request, which I will try to do, I will have to wait a month to obtain the copies. I will then take them to another office to have them certified and forward them as soon as I can.

6. Mr. Beggerly has asked how I found these documents when other experts were unable to do so. Of course, I do not know the answer to this, but I do know that as a genealogist, my research is often much more flexible and much broader than that which is done by someone with the specific purpose of identifying records relating solely to land titles. I have learned to search for names and interrelationships of parties which often turns up historic documents of little or no value to the party who is trying to establish a chain of conveyances for land title purposes. Since we approach our research differently, it is not surprising that a document which is not indexed according to a particular protocol might turn up in my research while being missed by others who have other purposes.

This, the 9th day of March, 1995.

Respectfully submitted,

/s/ EDITH F. AXELSON
EDITH F. AZELSON

Sworn to and subscribed before me on this, the *9th* day of March, 1995.

/s/ KAREN A. DREYER
NOTARY PUBLIC

My Commission Expires:

December 31, 1998

"BOURDEAU GRANT" RECORDS IN NATIONAL ARCHIVES

[This is a typed reproduction of the document in evidence, which appears in cursive.]

To the Commissioner of land claims east of Pearl-River

Sir

Please take notice that the heirs of Catalina Vincenardu Viuda Beaudreaux claims a tract of land, to wit "le Isle a horn" or Horn Island situate in the Bay of Pascagoula on the Mexican gulph by virtue of a grant from the Spanish Government dated in New Orleans 1 of August 1781 as will appear by the grant hereto annex'd.

E. Lewis Agent for the Claimants

Mr. Governor-General

Catharine Budro, an Inhabitant of Pascagoula with the greatest respect represents to your Excellency; that when she was at Mobile you had condescended to offer to give her Horn-Island; wherefore she supplicates your Excellency to grant her the said Island; a favor she expects from your well known charity: New Orleans 3 of July 1781. For Catharine Budro her Son signed -

John Badlela Bodro

New Orleans 4 July 1781

So far as regards the land which this person petitions for is in the Jurisdiction of Mobile, she will apply to the Commandant of that place, that when he is informed of this claim he can do that Justice it is entitled to.

Galvez

Mobile 21 July 1781

The Island which the claimant solicits is represented in the annex'd Plat to its extent; the land consists of Pasture & Trees, is a Royal possession— the Commanding General, by his order on form, will determine what may appear to him meet.

Henry Grimarest

From the French

Horn Island; running from east to west; its length, is about six leagues, or more; its breadth varies in different places; in one of them it is only one quart of a league, and in the other, one half & more—

There was a time, when 10 or 12 English people, wished to form a company to establish a cow-pen, upon the present Island, of which Mr. Grasit was one; but that did not take place; & to-day it only recognized as a property belonging to his Catholic Majesty.

BERNARD de GALVEZ, a pension'd Knight of the Royal and distinguished Spanish Order of Charles the third, Colonel of the Royal Army, governor, Intendent and Inspector General of this Province of Louisiana, &

Having seen the preceding documents (diligencias) executed by Lieut. Colonel Henry Grimarest, Commandant of the Town of Mobile, & to the possession which he has given to Catharine Vincenaudi, widow Beaudreaux of the Island commonly called Horn-Island, situated upon the Coast of Mobile running from east to west, containing about six leagues, as exhibited in the accompanying plat—and acknowledging to be conformable to the Order of Survey, without causing prejudice to the aforesaid Inhabitants, which they neither have claim'd rather consented as their assistance justifies said operations. Approving of

them as we approve of them, using the authority which the King has conferr'd to us, We grant in his Royal name to the said Catherine Vincenaudi, Widow Beaudros the said Horn Island, situated upon the aforesaid Coast of Mobile, that as her own she may dispose of and enjoy of, governing herself by said documents (diligencias) and conforming to all that is required (lo dispuesto) by the regulation of this subject we give the present signed by our hand, sealed with the Seal of our Arms & countersigned by the underwritten Secretary for his Majesty's government—in New Orleans 1st August 1781.

Ber^{d}. de Galvez

(seal)

By Order of His Lordship—
Andrew Arrnesto

VOLUME

203

LAND CLAIMS,
EAST OF PEARL RIVER,

EVIDENCE BOOK

B

[Tag attached reads as follows:]

DIV. D Private Land Claims

Item 126, Record of evidence
filed with the Brd. of Land
Commrs. for the area East of
the Pearl River, Miss.,
1813-14 (Vols. 202-204)
3 vols.

that it has been about twelve years since he ceased to cultivate the said land ; that the Indians stole his Corn & his Negroes which were at work on the place were threatened to be killed by the Indians, which caused him to quit the said place.—

Jacob Bend being sworn saith that Mr. Baudreaux kept some Negroes upon Horn Island about five or six Years, for the purpose of attending to her stock ; that it has been about eighteen Years since they ceased to live upon the Island ; but that Cattle have been kept upon the Island until the present time.—

To the Commissioner of Land Claims East of Pearl River

Sir

Please take notice that the heirs of Catalina Vincenarde Veuda Beaudreaux claims a tract of land, to Wit le Isle a Corn or Horn Island situate in the Bay of Pascagoula on the Mexican Gulph by virtue of a grant from the Spanish Government dated in New Orleans 1 of August 1781 as well appear by the grant hereto annexed.

E. Lewis Agent for the Claimants

Mr Governor-General

Catharine Budro, an Inhabitant of Pascagoula with the greatest respect represents to your Excellency; that when She was at Mobile you had condescended to offer to give her Horn-Island; wherefore she supplicates your Excellency to grant her the said Island; a favor she expects from your well known charity: New Orleans 3 of July 1781.— For Catharine Budro her Son signs.—

John Badilla Bodro

New Orleans 4 July 1781.

So far as regards the land which this person petitions for is in the Jurisdiction of Mobile, she will apply to the Commandant of that place that when he is informed of this claim he can do that Justice it is entitled to.

Galvez

Mobile 21 July 1781.

The Island which the claimant solicits, is represented on the annexed Plat to its extent; the land consists of Pasture & Trees, it

BEST AVAILABLE COPY

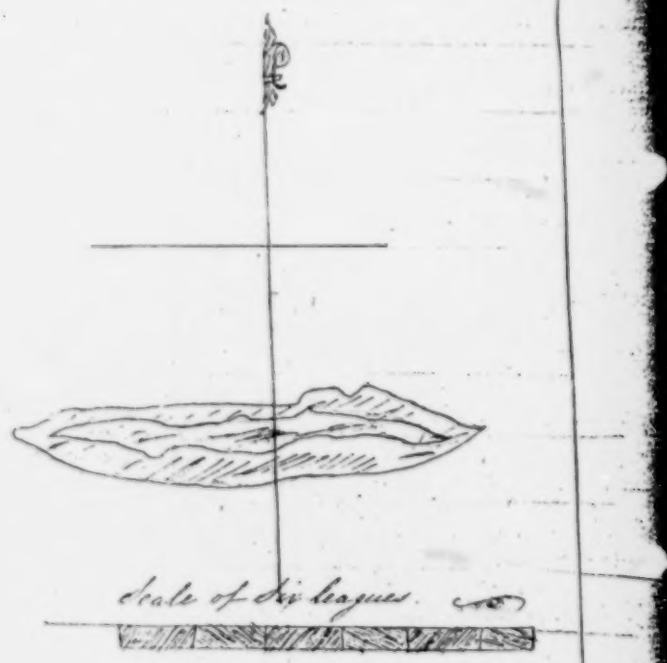
what may appear to him most.—

Henry Guimarest

From the French.

Horn Island; running from East to West; its length, is about six leagues, or more; its breadth, varies in different places; in one of them it is only one quart of a league, and in the other, one half & more.—

There was a time, when 10 or 12 English people, wished to form a company, & to establish a Cow-pen, upon this present Island, of which Mr. Grant was one; but that did not take place; & to-day it only recognized as a property belonging to his Catholic Majesty.—



Bernard de Galvez, a pensioned Knight of the Royal a
distinguished Spanish Order of Charles the third, Colonel of the Royal Army, Governor, In
dent and Inspector General of this Province of Louisiana, &c.

Having seen the preceding documents (diligencias) exec
by Lieut Colonel Henry Guimarest, Commandant of the Town of Mobile, re
to the possession which he has given to Catharine Vincenaude, widow Beaudreau
of the Island commonly called Horn-Island, situated upon the Coast of Mobile
running from East to West, containing about six leagues, as exhibited in the
accompanying plat.— And acknowledging to be conformable to the order
Survey, without causing prejudice to the aforesaid Inhabitants, which they
neither have claimed rather consented as their assistance justifies said
operations.— approving of them as we approve of them, USING the
Authority which the King has conferred to us, We grant in his Royal
name to the said Catharine Vincenaude, Wid. Beaudros the said Horn
Island, situated upon the aforesaid Coast of Mobile, that as her own she
dispose of and enjoy it, governing herself by said Documents (Diligencias) as
conforming to all that is required (lo dispuesto) by the regulation of this Isl
We Give the present signed by our hand, sealed with the Seal of o
Arms & countersigned by the undersmitten Secretary for his Majesty's

Government. — at New Orleans 1st August 1781. —

Ber.d de Galvez

seal

By Order of His Lordship.
Andrew Arnesto

To the Commissioners of Land Claims East of Pearl River

Sirs

Please take notice that I claim a tract of land lying on the River Pascagoula, at the entrance of Cedar Creek, quantity unascertained, by virtue of a permit from the Spanish Government dated the 30th of March 1810. —

Louisiana, East of Pearl River, } ss
27th Jan.y 1814

Translation, (from the Spanish)

Margaret Guillot, an Inhabitant of the town of Pensacolas with due respect presents herself before you & Says, that being desirous of removing to this Post with the Corps family that she has, consisting of her eldest Son, two daughters one married with three Sons, and as she is now encumbered with six Servants & has no manner of employ for them, - praying a vacant tract of land at the entrances of Cedar Creek on this River, which from its Situations is surrounded by the Lakes & Creeks which I now mention, one & half leagues to the entrance of Lake Mer; two leagues from Mills Creek; also one leagues to Bayou Ward; and one leagues to Bayou Lefait Lake, & half a leagues also to Lake Goodin; Wherefore she petitions you to grant her what she solicits to erect on the aforesaid tract of land the houses, for her own residences and that of her Servants, & to make a Cow-pen, the clearances & other works for farming — which is a favor &c. —

Pascagoulas 18 March 1810

Margaret Goguity

Pascagoulas 30th March 1810

In consideration of what the Petitioner represents I grant her permission to establish herself on the place she mentions, said Grant reserving her in preference (de preminencia) to any other persons, to present it to the Commandant of the town of Mobile, for his approbation & all other busi-

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action Number: 1:94cv264RR

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT OF JAMES L. MARTIN

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, James L. Martin, who stated on his oath the following:

1. My name is James L. Martin. I am an adult resident citizen of Jackson, Mississippi and am competent to testify. I have personal knowledge of the facts set forth in this affidavit.

2. I am currently a practicing attorney with the law firm of Martin and Young. In 1979 through 1982, I represented several landowners in litigation initiated by the United States Government to take and/or quiet title to Horn and Petit Bois Islands on the Mississippi Gulf Coast. More specifically, in regard to Petit Bois Island, I represented John Stocks and corporate business entities in which he was an equity owner in *United States of America vs. 717.42 acres of land*, Civil Action No. S80-0450(N), United States District

Court, Southern District of Mississippi, Southern Division. (A copy of the Petit Bois Complaint is attached as Exhibit "A".) In regard to Horn Island, I represented Chris Beggerly and his family as well as several other defendants in *United States of America vs. Andrew J. Adams, et al.*, Civil Action No. S79-0338(R). In the Petit Bois suit, the government acknowledged that the property at issue was privately owned and filed a condemnation suit to take the property; therefore, the principal issue in that litigation was the amount the government owed the private landowners for the fair market value of their property. In the Horn Island suit, the government sought to quiet title rather than to condemn the properties as it did in the Petit Bois suit. The government claimed in its complaint in the Horn Island suit, as well as throughout the litigation, that there were no valid patents or grants which conveyed the government's interest to private citizens and, therefore, the private titles were not valid.

3. To defend the Beggerlys' interest, I worked with counsel for the State of Mississippi, Mack Cameron, to develop the necessary proof of title. Our efforts included hiring experts including Richard Lackey, a highly qualified archivist with extensive experience. Mr. Lackey went to Washington and did independent research at various archives. Through his efforts and other sources, I obtained and reviewed documents which evidenced private habitation, cultivation and use of Horn Island going back to the Eighteenth Century, but not a confirmed grant or patent. We also deposed employees of the USA who were charged with the responsibility of maintaining land records including William Dorasavage, Chief, Branch

of Lands and Title Adjudications for the Department of the Interior, Bureau of Land Management, Eastern States Office, Alexandria, Virginia, and a member of his staff, Michael Knipfing, who did the basic records search for the government in support of the litigation. I assisted with the taking of the Dorasavage deposition. During that deposition, Mr. Dorasavage went into detail to explain the organization of the records and the extensive research done by his office before, and after, filing the quiet title action. Mack Cameron made a trip to Washington, D.C. and did research at the various archives in D.C. Over a three-year period, I reviewed numerous documents, did extensive research and talked with various government personnel in the Bureau of Land Management and other state and federal agencies in an effort to locate a valid patent or grant. Throughout this three year period, both Chris and Raleigh Beggerly gathered government title documents through their independent research at various archives and government record repositories. We exhausted all resources in search of a grant or patent. Unfortunately, as we approached the trial date, we did not have the necessary grant or patent to support our claim. The Court granted partial summary judgment dismissing our basic defenses and made it very clear to all defendants that without a valid grant or patent to support their claims, they had no claim.

4. As we approached the trial date, the lead counsel for the USA, Steve Hermann, advised that he thought that he could come up with some funds to assist with settling the lawsuit. Ultimately, he did come forward with some funds from a source unknown to me and agreed that the parties could share in these funds if

they would settle the lawsuit. We negotiated and signed a settlement and a judgment was entered terminating the litigation.

5. At no time during the settlement negotiations was there any discussion about the landowners transferring their title to the federal government. The government took the position that the landowners did not have title and that the settlement money was being paid simply as a means to conclude the litigation and to avoid the expense and risk of trial. Prior to negotiating the Horn Island settlement, we had received the Court's ruling in the Petit Bois litigation which determined that the Petit Bois surface estate (exclusive of the minerals) was worth over $8,000 per acre; therefore, the government, the Beggerlys and the other parties knew that the approximately $200 per acre was only a fraction of the value of the property. (The Court's Petit Bois opinion is attached as Exhibit "B".)

6. The Beggerlys did not want to settle the lawsuit and felt very strongly that they owned their property and that their title was good. Only after all other parties had agreed to the settlement, they reluctantly agreed.

7. I have been advised by the Beggerlys' present counsel that they have discovered a Spanish grant which they believe is a valid and binding grant. This certainly is a new and interesting discovery. I was not aware of any such grant until I talked with Ernest Taylor recently.

This, the 15th day of March, 1995.

Respectfully submitted,

/s/ JAMES L. MARTIN
JAMES L. MARTIN

Sworn to and subscribed before me on this, the 15th day of March, 1995.

/s/ JILL R. CHANDLER
Notary Public

My Commission Expires:

9/22/95

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. 1:94cv264RR

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT OF HANS W. BAADE

STATE OF TEXAS

COUNTY OF TRAVIS

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, Hans W. Baade, who stated on his oath the following:

1. My name is Hans W. Baade. I am an adult resident of Austin, Texas and am competent to testify. I have personal knowledge of the facts set forth in this affidavit.

2. I am currently the Hugh Lamar Stone Professor of Civil Law at The University of Texas at Austin. I currently teach, or have taught, public international law, international transactions, the conflict of laws, comparative law, Texas and southwestern legal history, United States and Texas public land and natural resources law, and international and comparative oil and mineral law.

3. My educational background is as follows: I received a B.A. degree in political science from Syracuse University in 1949 and a Doctor of Laws degree, *cum laude*, from the University of Kiel in West Germany in 1951. From 1951 to 1953, I served in the U.S. armed forces, mainly in a military intelligence unit. Thereafter, from 1953 to 1955, I studied law at Duke University and received both an LL.B. degree, with distinction, and an LL.M. degree in 1955. In 1956, I attended the Hague Academy of International Law in the Netherlands and received a diploma from that academy.

4. I am a member of the American Society of International Law and the American Foreign Law Association, a Director of the American Society of Comparative Law, a member of the editorial board of the American Journal of Comparative Law, and an associate member of the International Academy of Comparative Law. (Attached as Exhibit "A" is a more detailed biographical statement.)

5. In August, 1993, I was contacted by Ernest Taylor, one of the attorneys for the Plaintiff, who asked that I evaluate and determine the legal effect of a document which Mr. Taylor refers to as the "Boudreau Grant." The document is more particularly described as a grant (or concession) dated August 1, 1781, by Bernardo DeGalvez (at that time the Governor Intendent, and Inspector General of Spanish Luisiana) to Catarina Boudreau, an English translation of which is found in Volume 203, Land Claims East of the Pearl River, Evidence Book B, Item 126 (National Archives, Washington, D.C.). This document was part of the original record of the First Report of the Land Commissioners East and West of

the Pearl River, on private land claims of January 5, 1816.

6. My education, training and experience which is relevant to the analysis of the Boudreau Grant includes the following: In connection with research for several article on Spanish and Mexican law in the Southwestern United States published between 1975 and 1983, I worked in the National Archive in Madrid, the Archive of the Indies in Seville, the Historical Archive of the Nation of Mexico City, the Archive of the Audiencia of Guadalajara in the city of Guadalajara, Mexico, and archives and court house records in the United States from New Orleans to Sonoma County in California. Frequently consulted on questions of historic land and water rights since that time by (among others) the Texas Water Commission and Attorney General as well as the New Mexico State Engineer, I have been employed as an expert on historic land and water rights, in particular, in *State ex rel. Martinez v. City of Las Vegas*, 880 P.2d 868 (N.M. App. 1994) (the "Pueblo Water Rights" case); *In re Adjudication of Water Rights in the Medina River Watershed of the San Antonio River Basin*, 670 S.W.2d 250 (Tex. 1984), and *Alabama Coushatta Tribes v. United States* (U.S. Claims Court Congressional Reference, 1986), approved by Act of Congress, 102 Stat. 1097 (1988).

7. After accepting employment and reviewing the Boudreau Grant, I determined that certain additional research was appropriate. Therefore, I did the following: I reviewed the pertinent materials in the *American State Papers: Public Lands* relating to Louisiana, West Florida, and (for additional background) East Florida, historical and legal accounts

pertinent in relation thereto, the jurisprudence of the Supreme Courts of Louisiana and of the United States and of lower federal courts, historical accounts of the Mobile District and of Spanish Alabama and Mississippi, my prior extensive work on the public land law of the Louisiana Purchase in connection with the *Alabama Coushatta Tribes* case, and sources on the Mobile and Pensacola campaigns of Governor Galvez.

8. In late September 1993, I completed my work and prepared and delivered the memorandum on the title to Horn Island which is attached hereto as Exhibit "B." Since delivering a slightly revised report on that document in October 1993, I have done further historical research in the Translated Records archived in the Probate Court, Mobile County, in Mobile, Alabama, as well as microfilm sources from the Archive of the Indies on deposit at Loyola University, New Orleans. This additional research served to support and corroborate my prior opinion.

9. In summary, as is set out in detail in my attached memorandum, Exhibit "B", my opinion concerning the Boudreau Grant is as follows:

a. The Boudreau Grant is a legitimate, authentic grant of Horn Island to Catarina Boudreau, a prominent citizen and landowner in the area at the time of the grant. The grantor, Governor Hernando de Galvez, had authority to make the grant to Catarina Boudreau and the grant was a complete and final grant when made, fully in compliance with the Spanish territorial law pertinent to the time and place where made.

b. Since the Boudreau Grant was a valid and complete Spanish land grant, its validity was accepted by the United States by the 1819 Treaty of Amity, Settlement, and Limits between Spain and the USA. Therefore, the fact that it was not confirmed as a settlement grant when presented to the U.S. land commissioners in 1816, was irrelevant. *See United States v. Percheman*, 32 U.S. (7 Pet.) 51 (1833).

c. Since the grant was a valid and complete Spanish grant, recognized as valid by treaty between Spain and the USA, the subject property never became part of the public domain of the USA, by virtue of the Louisiana Purchase in 1803 or otherwise. The property continued as private property and was not transferred by Spain to the United States.

d. Since Horn Island never became the property of the USA, it was subject to the laws of the State of Mississippi applicable to private property including the laws providing that a county may sell property within its jurisdiction for delinquent taxes.

e. The United States Government received the Boudreau Grant in 1816 and has had it in its continual possession since that date. Unfortunately, the Boudreau Grant, having been made in 1781 by the Spanish government and approved by treaty, though complete, valid and binding, was never reflected in the USA tract books or in official surveyors' plats, which reflect grants by foreign sovereigns so as to indicate their unavailability for entry, selection, or other disposal under United States public land laws. It

fit into a special category and, therefore, was never properly indexed. At the time that the United States Government filed the Adams-Beggerly action and represented to the Court, the Beggerlys and other litigants, that there were no foreign land grants ever issued on Horn Island, the United States Government was in functional and institutional control of the Boudreau Grant. Therefore, the "Stipulation and Settlement" incorporated by reference in the Judgment of December 3, 1982, was based upon a misstatement of a crucial fact when the United States Government alone had official and institutional knowledge of (and access to) the truth.

This, the 9th day of March, 1995.

Respectfully submitted,

/s/ HANS W. BAADE
HANS W. BAADE

Sworn to and subscribed before me on this, the 9th day of March, 1995.

[seal omitted] /s/ DEBORAH STEED
NOTARY PUBLIC

My Commission Expires:
12/15/98

Memorandum on Title to Horn Island

Hans W. Baade
Hugh Lamar Stone Chair in Civil Law
The University of Texas School of Law

Prepared for

Watkins Ludlam & Stennis

October 1993
Austin

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* This memorandum does not purport to express opinions of, or attributable to, The University of Texas at Austin.

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Introduction

Horn Island is located in the Gulf of Mexico, about a dozen statute miles off the coast of the State of Mississippi somewhat to the east of Pascagoula, the county seat of Jackson County. It presently forms part of the Gulf Islands National Seashore, established pursuant to an Act of Congress dated January 8, 1971. 84 Stat. 1967.

Section 2 of that enactment provided essentially two means for the acquisition of lands for this National Seashore. First, the Secretary of the Interior was authorized to acquire "lands, waters, and interests therein by donation, purchase with donated or appropriated funds, or exchange" within the boundaries of the seashore, defined so as to include "Ship, Petit Bois, and Horn Islands in Mississippi." *Id.* Sec. 2(a); 1(1). Secondly, any Federal property within the seashore as thus defined could be "transferred without consideration to the administrative jurisdiction of the Secretary (of the Interior) for the purposes of the seashore." Sec. 2(a) *in fine*.

Seeking to avail itself of this latter alternative, the United States instituted proceedings in 1979 to quiet title to Horn Island. *United States v. Adams, et al.*, Civ. No. S79-0338 (R) (S.D. Miss. 1982). That matter was concluded by judgment of December 3, 1982, which incorporated by reference "the terms of a Stipulation for Settlement" of even date, and quieted title to Horn and Ship Islands in plaintiff United States of America. It is understood that the Stipulation for Settlement thus referred to included provision payment by the United States of substantial sums to various parties claimant.

These payments were made in satisfaction of various claims based on titled traced to the State of Mississippi and/or to rights of occupancy under the Color of Title Act, 43 U.S.C. § 1068. For background, see *Arthur Baker et al., Skrmetti Realty Co.*, 64 Interior Decisions 82 (1957). In *Adams, supra*, plaintiff United States had expressly contended, in Part II of its motion for summary judgment: "THERE WERE NO FOREIGN LAND GRANTS EVER ISSUED ON THE SUBJECT LANDS." Plaintiff's Memorandum in Support of Its Motion for Summary Judgment, p. 6. As the parties asserting proprietary interests in Horn Island were unable to controvert this bald assertion, the "Stipulation for Settlement" of December 3, 1982, did not reflect payments in settlement of claims founded on grants by former sovereigns.

In the meantime, diligent efforts by James R. Beggerley (a claimant to various lots on Horn Island, and a participant in the above-mentioned proceedings) have led to the discovery of evidence documentary of a grant (or concession) dated August 1, 1781, by Bernardo de Galvez (at that time the Governor General, Intendant, and Inspector General of Spanish Luisiana) to Catarina Boudreau. In terms and as further illustrated by the sketch of survey incorporated therein by reference, it encompasses the whole of Horn Island. An English translation of this grant (or concession) is found in Volume 203, Land Claims East of the Pearl River, Evidence Book B, Item 126 (National Archives, Washington, D.C.). As received and archived originally, it was part of the record documentary of the first Report of the Land Commissioners East and West of the Pearl River, on Private Land Claims, of January 5, 1816.

That report is reproduced in 3 American State Papers, Public Lands 7 *et seq.* (1834). The claim of the "Heirs of Catherine Boudreau" which appears there as Item 51 on p. 15, describes the property as being "6 leagues in length, with various widths," situated in the "Gulf of Mexico," but does not identify it as Horn Island. Such identification was possible only by a search of the records compiled by the Land Commissioners East and West of the Pearl River appointed pursuant to Act of Congress of April 25, 1812, 2 Stat. 713 (ch. 67).

An enactment of even date, 2 Stat. 716 (ch. 68) had created the General Land Office as a bureau of the Treasury Department. For that reason, the Reports of the Land Commissioners East and West of the Pearl River, dated January 5, 1816, were addressed by them to the Secretary of the Treasury, and submitted by the latter to Congress for further action. See Sec. 1 of the Act of March 3, 1819, 3 Stat. 528. Exactly three decades thereafter, the Act "to establish the Home Department" (the Department of the Interior) provided that "the Secretary of the Interior shall perform all the duties in relation to the General Land Office, of supervision and appeal, now discharged by the Secretary of the Treasury." Act of March 3, 1849, 9 Stat. 395, sec. 3. By Presidential Reorganization Plan No. 2 of July 16, 1946, the General Land Office and the Grazing Service of the Department of the Interior were consolidated into the Bureau of Land Management. M. Clawson, *The Bureau of Land Management* 38 (1971). It follows that the Secretary of the Interior (the official in charge of establishing the Gulf Islands National Seashore) was at the time of the above-mentioned proceedings to quiet title to

Horn Island in charge of the very same federal government entity which had received, reported on, and archived a Spanish land grant (or concession) to that island.

Thus, plaintiff's assertion in the proceedings to quiet title in Horn Island that "THERE WERE NO FOREIGN LAND GRANTS EVER ISSUED ON THE SUBJECT LANDS" was a misrepresentation (negligent or at best innocent) by or on behalf of a party in direct functional and institutional control of documentary evidence to the contrary. If the grant (or concession) of Horn Island to Catarina Boudreau by Governor Galvez on August 1, 1781, was effective under the pertinent law prevailing at the relevant time and place, it seems highly likely, therefore, that the "Stipulation and Settlement" incorporated by reference in the judgment of December 3, 1982 is vitiated by a material mistake induced by the Plaintiff, which alone had official and institutional memory of (and access to) the truth.

Issues

The present memorandum has been prepared at the request of Ernest G. Taylor, Esq., of the Jackson, Mississippi bar, counsel to James R. Beggerley. Mr. Beggerley was a party to *United States v. Adams et al., supra*, and to the Stipulation and Settlement of December 3, 1982, incorporated by reference into the judgment of the United States District Court for the Southern District of Mississippi of even date, quieting title to Horn Island in the United States.

In those proceedings, Mr. Beggerley had asserted title to part of Horn Island by virtue of purchases by his father, Clark M. Beggerley, Sr., of various lots in

Federal Survey Township 9 South, Range 6 West, at a sale of these properties for delinquent taxes, held by the Sheriff and Tax Collector of Jackson County, Mississippi, at the court house of that county in Pascagoula on April 3, 1950. These lots are located on Horn Island, which as platted in 1847 encompasses parts of Township 9 South, Ranges 6, 7, and 8 of the Mississippi federal survey.

Mr. Beggerley's assertion of title to portions of Horn Island was thus based not on a grant by a former sovereign or by the United States, but on a purchase of lands seized and sold for tax deficiency by the State of Mississippi. This sale was valid only if these lands were not at the time of the sale public lands of the United States. That is so because by virtue of an irrevocable condition accepted by Mississippi as a precondition of admission to the United States as a State on equal footing, a convention of the people of Mississippi Territory Mississippi had "agree(d) and declare(d) that they for ever disclaim all right or title to the waste or unappropriated lands lying within the said territory, and that the same shall be and remain at the sole and entire disposition of the United States;" and "that no taxes shall be imposed on lands the property of the United States." Act of March 1, 1817, Sec. 4, 3 Stat. 348, 349.

Section 2 of that enactment, *id.* 348, had defined the territory of the State of Mississippi as "including all the islands within six leagues of the shores" of that State, thus encompassing Horn Island. To the extent that Horn Island consisted of "waste and unappropriated lands" of the United States at the date of Mississippi's incorporation into the Union on December 10, 1817 (3 Stat. 472), however, such lands remained part

of the public domain of the United States. The "waste and unappropriated lands" of the United States within the boundaries of the State of Mississippi could not even be taxed, nor yet sold, by that State.

In its action to quiet title in Horn Island, the United States was able to establish, through production of the appropriate Tract Book entries, that since the filing of the federal survey plat encompassing Horn Island, no land on that island had been granted out of the sovereignty of the United States. That proof relates back to the acquisition of sovereignty over Horn Island by the United States, for as the Supreme Court of the United States said, in *Buxton v. Traver*, 130 U.S. 232, 235 (1889): "No portion of the public domain, unless it be in special cases not affecting the general rule, is open to sale until it has been surveyed and an approved plat of the township embracing the land has been returned to the local land office."

On the other hand, if (and to the extent that) Horn Island was not part of the public domain of the prior sovereign when the United States obtained sovereignty of the soil by cession and/or state succession, such lands did not become part of the public domain of the United States. In that alternative, they were fully subject to the law of the State of Mississippi as that law stood from time to time, with the result that the validity of the titles acquired by Mr. Beggerley's father at the Jackson County tax sale on April 3, 1950, falls to be determined solely by Mississippi state law.

At the time of the pendency and the settlement of the action by the United States to quiet title to Horn Island, Mr. Beggerley had no knowledge of the grant (or concession) of that island by Governor Galvez to

Catarina Boudreau of August 1, 1781. He thus had no opportunity to demonstrate

(1) that this grant (or concession) operated under the pertinent law in effect at the relevant time and place, to sever Horn Island from the public domain of that sovereign, and

(2) that Horn Island not revert, prior to the acquisition of sovereignty of the soil by the United States, to the public domain of a prior sovereign from whom the United States claims title through cession and/or state succession.

These are the two issues to be discussed in the present memorandum.

I

THE WEST FLORIDA CESSION

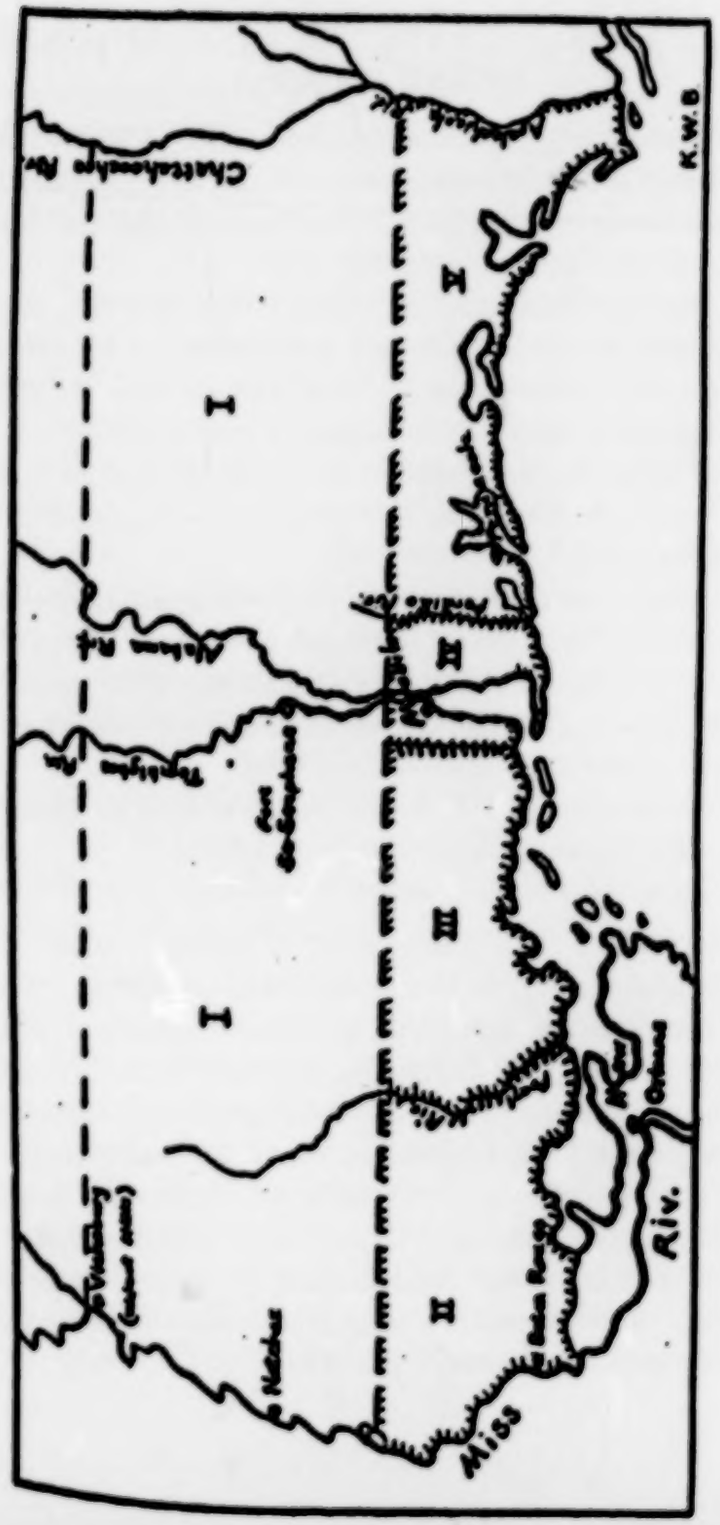
1. Background and Chronology

No other area of the continental United States has attracted as vast an array of public land-related questions as the area between the Pearl and Perdido Rivers south of the Thirty-First parallel, *i.e.*, the coastal region of the present States of Mississippi and Alabama. This area was occupied (and at times fought over) by no less than three sovereigns other than the United States: France, Great Britain, and Spain. In the first two decades of the nineteenth century, it was claimed by the United States but held, in whole or in part, by Spain. Only when Spain ceded "West Florida" along with "East Florida" (= present-day Florida) to the United States by the Treaty of Amity, Settlement, and Limits of February 22, 1819, 8 Stat. 252, did sovereignty to these lands cease to be in dispute. The following map, taken from the authorita-

tive account of I.J. Cox, *The West Florida Controversy, 1798-1813* after p. 2 (1918; reprint 1967) illustrates the geographic and temporal dimensions of conflicting claims of sovereignty over this area.

[Following]

MAP TO ILLUSTRATE THE ACQUISITION OF WEST FLORIDA



[Following]

MAP TO ILLUSTRATE THE ACQUISITION OF WEST FLORIDA

I. Territory added to the original jurisdiction of West Florida by
1767 Great Britain in [redacted]; in dispute between Spain and the United States, 1783-1795; relinquished by Spain in the Treaty of 1795 and definitely occupied by the United States in 1798.

II. Territory claimed by the United States, 1803-1810, as part of the Louisiana Purchase; proclaimed independent by its inhabitants, September, 1810, and occupied by the United States in the following December; incorporated with the State of Louisiana in 1812.

III. Claimed by the United States as above; brought under its military and civil jurisdiction in 1811; incorporated with Mississippi Territory in 1812.

IV. Claimed by the United States as above; American jurisdiction proclaimed there by Claiborne (1811) and by Holmes (1812), except in the town of Mobile; occupied by the military forces of the United States, April, 1813, and the civil jurisdiction of Mississippi established there; later part of Alabama.

V. Invaded by Jackson, in 1814 and 1818; ceded by Spain to the United States in the Treaty of 1819; part of Florida.

Sovereignty of Spain over Florida (later "East Florida") dates from the sixteenth century. French settlement along the Gulf of Mexico started about a century thereafter, and the French settlements at Biloxi and Mobile preceded those at New Orleans and Natchitoches but formed part of French Louisiana along with them. The eastern boundary between French Louisiana and Spanish Florida until the events of the French and Indian War lay somewhere between Mobile and Pensacola, the former being French, and the latter, Spanish.

Two major changes of sovereignty occurred as a result of the defeat of France and Spain in the French and Indian War. First, pursuant to the Treaty of Peace between these three countries, signed at Paris on February 10, 1763, "Florida, with Fort St. Augustine, and the Bay of Pensacola" was ceded by Spain to Great Britain. Secondly, by article 7 of the same treaty, the King of France ceded to Great Britain "the river and port of the Mobile, and every thing which he possesses, or ought to possess, on the left side of the river Mississippi, except the town of New Orleans and the island in which it is situated, which shall remain to France." C. Parry, ed. 42 Consolidated Treaty Searies (U.K.) 331 & 226. Thus, sovereignty of the area between the Pearl and Perdido Rivers passed to Great Britain along with all of Spanish Florida. A third change of sovereignty occurred immediately to the west of this area as a result of these cessions: in fulfillment of its obligations under the Bourbon family compact, France ceded the remaining parts of French Louisiana to Spain. For details, see Baade, "Marriage Contracts in French and Spanish Louisiana: A Study in Notarial Jurisprudence," 53 *Tulane L. Rev.* 1, 30-31 (1978).

Great Britain took possession of Pensacola in August, 1763, and of Mobile on October 20 of that year. By Royal Proclamation of October 7, 1763, British Florida was divided into the colonies of East and West Florida, divided by the Appalachicola River. Robert L. Gould, *Borderland Empires in Transition, The Triple-Nation Transfer of Florida* 103, 112-13 & 118-19. Thus, the entire Gulf Coast area here described became part of the colony of West Florida under British rule. This included Horn Island, since the

Royal Proclamation of October 7, 1763, defined West Florida so as to "includ(e) all Islands within Six Leagues of the Coast." Gould at 119.

The next changes in sovereignty occurred in and after the American Revolutionary War, which found the rebellious thirteen Atlantic seaboard colonies (excluding the Floridas) in actual military alliance with France and tacit military alliance with Spain. Spanish military activities along the Gulf coast are especially important in this connection, for the Spanish forces were commanded in person by Governor General Bernardo de Galvez of Luisiana. On March 14, 1780, Galvez captured Mobile. Some fourteen months later, as the result of an amphibious operation launched from Cuba in October, 1780, he captured Pensacola. By the articles of surrender signed by General Campbell at Pensacola on May 10, 1781, the British forces surrendered the entire colony of West Florida to Spain. J. Barton Starr, *Tories, Dons, and Rebels, the American Revolution in British West Florida* 173-74, 210-211 (1976).

This surrender was formalized by the Preliminary Treaty between Great Britain and Spain, signed at Versailles on January 25, 1783. Article 3 of the French (authentic) text of that treaty provided: "Sa Majesté Britannique cedera á sa Majesté Catholique la Florida Orientale, et sa ditte Majesté Catholique conservera la Floride Occidentale." C. Parry, Ed. 48 Consolidated Treaty Series 251. Thus, Spain was "ceded" East Florida but "kept" West Florida, which was already in Spanish possession by virtue of General Campbell's surrender of that colony at Pensacola on May 10, 1781. (This dispels doubt as to the propriety of land grants (or concessions) by Spanish authorities in West Florida in August of that year.)

The division of East and West Florida into two provinces was maintained under Spanish rule. Corbitt, "The Administrative System" *supra*, at 54 *et seq.* It appears from documents published in the authoritative work of Joseph M. White, *A New Collection of Laws, Charters and Local Ordinances of the Governments of Great Britain, France and Spain, relating to the Concessions of Land in Their Respective Colonies* (1839) (= *White's Recopilacion*) that a Spanish governor of West Florida was appointed in May, 1781, 2 *White's Recopilacion* 255, but that the post commandants at Mobile and Pensacola remained immediately subject to the Governor of Spanish Luisiana, 2 *id.* 454 (Governor General Miro's commission); 455, 455 (Governor General Baron de Corondelet's commission). The authority of Governor General Galvez to "govern" Mobile was spelled out in a royal Order of February 12, 1781, quoted in English translation by Corbitt, *infra* at 42. It is also established that until the Intendancy Ordiance of 1798 was put into effect locally, the Governors of Spanish Luisiana had power to make, and did make, land grants in West Florida under the rules governing the making of lands grants in Spanish Luisiana. 2 *White's Recopilacion* 338, 339 (Report of Surveyor General Pintado); *Murdock v. Gurley* 5 Rob. (La.) 457, 466 (1843).

The most detailed account of the Mobile region under Spanish rule is contained in Peter J. Hamilton, *Colonial Mobile, An Historical Study, largely from Original Sources, of the Alabama-Tombigbee Basin from the Discovery of Mobile Bay in 1519 until the Demolition of Fort Charlotte in 1821* (1897). Its

author was a lawyer, and had been City Attorney of Mobile. More recently, Jack D. L. Holmes (a leading authority on Spanish settlement in what is now Alabama and Mississippi) has reported on "Alabama's Forgotten Settler: Notes on the Spanish Mobile District, 1780-1813," 33 *Alabama Hist. Q.* 87 (1971). Peter Zahendra, *Spanish West Florida, 1781-1821* (Ph.D. dissertation, University of Michigan 1976, unpublished) marshals the pertinent sources. D. C. Corbitt, "The Administrative System in the Floridas, 1781-1821," 1 *Tequesta* (no. 2) 41 (August, 1942) is still indispensable.

Hamilton's extensive discussion of land transactions in Mobile (unfortunately limited to land in present-day Alabama) is based on Spanish-era documents contained in two "heavy cypress boxes" then stored in the Mobile Probate Court, made "accessible to the public" by two manuscript volumes of Translated Records, completed in 1840 by Joseph E. Caro under a commission from Governor Bagby of Alabama pursuant to an act of the legislature of that State, dated January 9, 1833. Hamilton 262. It also appears that Pascagoula was "long dependent on the Mobile parish," *id.* 156, and the districts of the Post Commandants under Spanish rule generally followed the parish boundaries of Roman Catholic churches. Henrique Grimarest is mentioned as Commandant of the Mobile District by Hamilton at 262 *et seq.*, and in numerous official sources mentioned further below.

It should also be mentioned that pursuant to article 5 of the definitive treaty of peace between Spain and Great Britain, of September 3, 1783, C. Parry, Ed., 48 Consolidated Treaty Series 481, 482, British subjects resident in West Florida were given eighteen months

from the exchange of ratifications to "sell their estates and remove their effects," which period could be extended if that time was insufficient because of the value of the estate to be disposed. Thus, British land rights in West Florida were not confirmed but expected to terminate. After 1785, it became possible to secure confirmation of such grants from the Governor of Spanish Luisiana on condition of taking an oath of loyalty to Spain, see *Murdock v. Gurley*, 5 Rob. (La.) at 458-60, but subject to that exception, previously British-held lands in West Florida were treated as part of the Spanish royal domain, available for grant (or concession) by the Governor of Spanish Luisiana.

2. The West Florida Controversy

The United States, which came into existence in and by virtue of the War of the American Revolution, does not figure in the developments outlined above. Its first official appearance in the "Old Southwest" was in the dispute over the northern boundary of Spanish West Florida, which eventually was established by article 2 of the Treaty of San Lorenzo, of October 27, 1795, at the thirty-first parallel between the Mississippi and Appalachicola Rivers. 8 Stat. 138. The implementation of the treaty first confronted the United States with the problem of verification and confirmation of Spanish as well as British land titles and land claims, and the legislative precedents then set were to be of substantial significance after the Louisiana Purchase. See R. V. Haynes, "The Disposal of Lands in the Mississippi Territory," 24 *J. Miss. Hist.* 226, 233 *et seq.* (1962); H. Coles, "The Confirmation of Foreign Land Titles in Louisiana," 38 *La. Hist. Q.* 1, 3 *et seq.* (1958). Beyond that, the

continuing significance of the Treaty of San Lorenzo of 1795 is that it put beyond doubt the position of Spain as the lawful sovereign of West Florida below the Thirty-First Parallel (which, incidentally, had also been the northern boundary of British West Florida under the Proclamation of 1763).

All this was to change with the Louisiana Purchase of 1803. France, we have seen, had ceded French Louisiana to Spain in 1762. In the Treaty of San Ildefonso, of October 1, 1800, Spain undertook to retrocede (then Spanish) Luisiana to France, and in article 1 of the Louisiana Purchase Treaty of April 30, 1803, France ceded Louisiana to the United States by in effect assigning the San Ildefonso Treaty cession. 8 Stat. 200, 200-201. As there reproduced, that latter treaty had envisaged the cession of "the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, *and that it had when France possessed it*" (emphasis added). Since the Mobile District had been part of French Louisiana, the United States claimed that it was included in the Louisiana Purchase. As that district had never been part of Spanish Luisiana, Spain took the opposite view.

The Louisiana Purchase territory was transferred by Spain to France on November 30, 1803, and by France to the United States on December 20, 1803. Soon thereafter, the United States laid claim to the Mobile District. Ostensibly to suppress lawlessness but mainly so as to bolster its claim to that part of the area, the United States occupied Pascagoula in Summer 1811, and Mobile itself was surrendered under protest by the Spanish authorities on April 13, 1813. I. J. Cox, *The West Florida Controversy, 1798-1813* at

584-619 (1918; reprint 1967). The legal consequences of the assertion of United States sovereignty over French Louisiana in its original dimensions were first spelled out in section 14 of the Act of April 30, 1804 "erecting Louisiana into two territories and providing for the temporary government thereof," 2 Stat. 283, 287-89. It provided, in pertinent part:

> That all grants for lands within the territories ceded by the French republic to the United States, by the treaty of the thirtieth of April, in the year one thousand eight hundred and three, the title whereof was, at the date of the treaty of St. Ildefonso, in the crown, government, or nation of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title or claim, to such lands, and under whatsoever authority transacted, or pretended, be, and the same are hereby, declared to be, and to have been from the beginning, null, void, and of no effect in law or equity: *Provided, nevertheless*, That any thing in this section contained shall not be construed to make null and void any bona fide grant, made agreeably to the laws, usages, and customs, of the Spanish government, to an actual settler on the land so granted, for himself, and for his wife, and family; or to make null and void any bona fide act or proceeding done by an actual settler, agreeably to the laws, usages, and customs, of the Spanish government, to obtain a grant for the lands actually settled on by the person or persons claiming title thereto, if such settlement, in either case, was actually made prior to the twentieth day of December, one thousand eight hundred and three: *And provided, fur-*

ther, That such grant shall not secure to the grantee, or his assigns, more than one mile square of land, together with such other and further quantity as heretofore hath been allowed for the wife and family of such actual settler, agreeably to the laws, usages and customs, of the Spanish government.

This provision laid down three of the four rules which (alone or in combination) were to govern United States recognition of Spanish land titles in Louisiana and in Mississippi and Alabama below the Thirty-First Parallel. First, the United States did not recognize, as of right, *any* land grant or concession emanating from a foreign country as to lands over which the United States claimed sovereignty at the time of such grant or concession, even if the granting State was in actual possession of the land at that time and the United States was not. Secondly, the United States undertook to recognize, nevertheless, not only *bona fide* grants, but even *bona fide* land claims, valid under the "laws, usages, and customs of the Spanish government," provided only that they were made to *actual* settlers. Thirdly and finally, such grants and claims to *actual settlers* were to be recognized only to the extent that they did not exceed *acreage limitations imposed by United States law*.

These three rules have to be viewed in contrast to a fourth one, which forms the background of United States public land law in territories acquired by treaty in and since the Louisiana Purchase. Eighteenth-century Spain (an enlightened but nevertheless an absolute monarchy ruled by His Most Catholic Majesty) did not tolerate heretics on Spanish soil, and therefore did not guarantee the property rights of British subjects after the 1781-83 cession beyond a short period of grace for disposal and removal. See *supra* p. 7 [131-132], and for subsequent developments under Spanish rule, G. Din, "The Immigration Policy of Governor Esteban Mirõ in Spanish Louisiana," 73 *S.W. Hist Q.* 155, 156-65 (1969).

In sharp contrast thereto, the United States (a secular republic) routinely guaranteed pre-existing property rights in the cession area when acquiring territory by treaty of cession. Therefore, the rule that the United States did not recognize land grants by a foreign state not recognized as the lawful sovereign *in loco* at the time of the grant was really an exception to the more general rule that the United States *did* recognize the continued validity of land grants by a former sovereign while in lawful possession of land subsequently ceded to the United States.

3. Congressional Action on Spanish Grants and Claims

This rule was first spelled out in the Louisiana Purchase Treaty of 1803. By articles 2 and 3 of that treaty, France ceded to the United States the cession "territory with all its rights and appurtenances," further defined to include "adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property." Article 4 went on to provide that the inhabitants of the ceded territory were to be "maintained and protected in the free enjoyment of their liberty, property, and the religion which they process." 8 Stat. 201, 202. Thus, the public lands of the Louisiana Cession

passed to the United States; the private lands remained private.

Given the adamant position of the United States that the Louisiana Cession included the Mobile District, logical consistency would seemingly have called for the adoption of a system of land rights verification and validation based on article 4 of the Louisiana Cession Treaty. Logic, however, had to yield to the hard fact that Spain was in control at Pascagoula until the summer of 1811 and at Mobile until April 13, 1813, and that any definitive resolution of matters relating to the validity of land titles in that area would remain impossible until the resolution of the West Florida dispute between Spain and the United States. In any event, when Congress adopted the "Act for ascertaining the titles and claims to lands in that part of Louisiana which lies east of the river Mississippi and island of New Orleans" of April 25, 1812, 2 Stat. 713, it made no reference, direct or indirect, to article 4 of the Louisiana Cession Treaty.

As indicated by its caption, the act of August 25, 1812, set forth a scheme for "ascertaining" both "titles" and "claims" to lands in West Florida. The area between the Mississippi River and New Orleans to the West and the Perdido River to the East was divided into two districts, separated by the Pearl River (later the boundary between the States of Louisiana and Mississippi). A commissioner was to be appointed for the lands east [sic] of the Pearl (later to be known colloquially as the "West Florida parishes" of Louisiana), and another one for the lands between the Pearl and the Perdido, now corresponding to the coastal areas of the States of Mississippi

and Alabama-south of the Thirty-First Parallel (Sec. 1).

With the aid of a clerk "capable of translating the French and the Spanish language," these two commissioners were to receive "evidences of titles and claims to lands" within their respective districts (sec. 2), but the word "title" disappears thereafter, to be swallowed up by "claim," employed comprehensively to cover "any grant, order of survey, or other evidence of claim whatsoever, derived from the French, British, or Spanish governments." (sec. 3). The commissioners were directed to inquire into the "justice and validity" of claims (including we see "claims" based on grants), and charged with the duty "to ascertain, in every case, whether the lands claimed have been inhabited and cultivated; at what time such inhabitation and cultivation commenced; when surveyed, and by whom and what authority; and into every other matter respecting the claims which may affect the justice and validity thereof." (Sec. 5). They were to prepare "abstracts from the records of the claims filed as aforesaid, in which the claims shall be arranged into classes, according to their respective merits, and other circumstances whereby they may be diversified," and these abstracts as thus reported were to be "laid before congress" by the Secretary of the Treasury "for their determination thereon" (sec. 7). Additionally, the commissioners were directed "to collect and report to congress, at their next session, a list of all the actual settlers on land in said districts, respectively, who have no claims to land derived either from the French, British, or Spanish, governments, and the time at which such settlements were made" (sec. 8).

Thus, the original federal legislative scheme for ascertaining French-, British- and Spanish-derived entitlements to lands in the Mobile District was cast entirely in terms of claims rather than rights, to be "determin(ed)" by Congress "according to their respective merits," with special emphasis on the time and length of inhabitation and cultivation. This scheme is reflected faithfully in the Reports of the Land Commissioners East and West of the Pearl River, on Private Land Claims, of January 5, 1816, subsequently published in American States Papers, 3 public Lands 6 et seq.

The first of these reports, by William Crawford, Commissioner for the District east of the Pearl River, contains registers of twelve different categories of claims, starting with 17 modest town lot-size grants ranging from 150 to 1,600 arpens, "founded on complete grants from the French, British, or Spanish Governments, which claims are, in the opinion of the Commissioner (east of the Pearl River) valid, agreeable to the laws, usages, or customs of said Governments." These are listed *id.* at p. 7.

The sixth category comprises 111 "claims, of various dimensions; which claims ought *not* in the opinion of the said Commissioner, to be confirmed." These are listed *id.* at 14-17. The claim of the Heirs of C. Boudreau, in right of Catalina Boudreau based on a "Spanish concession," appears there on p. 15 under no. 51. It is described as being "6 leagues in length, with various widths," situated in the Gulf of Mexico, and issued by Galvez. There is no entry as to who made the survey, but only an entry, printed across three columns, headed

When By Whom Cultivation

"Cattle have been generally kept upon the island, and formerly negros attended them, but not inhabited or cultivated."

This list of 111 claims is followed by an entry reading: "Remarks on the preceding claims.—The preceding claims are forfeited—most of them under the Spanish law, for want of inhabitation and cultivation; and do not appear to be entitled to confirmation under any law of the United States. A few are derived from officers who had no right to grant, or, at most, not on so extensive a scale." *Id.* 17. Virtually all of these 111 claims are listed as "not inhabited or cultivated"—presumably as of the date of the report.

Congressional response to this report is reflected in the Act of March 3, 1819, "for adjusting the claims to land, and establishing land offices, in the districts east of the island of New Orleans," 3 Stat. 598. Section 1 there, so far as here material, recognized "as valid and complete titles against any claim on the part of the United States, or right derived from the United States," all "claims" to land "founded on complete grants from the Spanish government," found by the Commissioners to have been "valid, agreeably to (Spanish) laws, usages, and customs." Claims "founded on any order of survey, requette, permission to settle, or any written evidence of claim" were, if recommended by the Commissioners for approval and if "cultivated and inhabited," confirmed "in the same manner as if title had been completed," but only for quantities up to 1,280 acres unless surveyed under Spanish authority before April 15, 1813 (sec. 2). Claims by actual settlers unsupported by written

evidence were to be rewarded by "donation(s)" of up to 640 acres, but only if the land had been "actually settled or inhabited" (sec. 3).

Neither the Act of March 3, 1819 nor its subsequent amendments dealt with the fate of grants and claims received and recorded by the Commissioners but not recommended for confirmation. This was so, we may assume safely, because that matter had been covered by the Treaty of Amity, Settlement, and Limits with Spain, 8 Stat. 252, signed in Washington on February 22, 1819 and assented to by the Senate two days thereafter—exactly one week before the adoption of the Act of March 3. That treaty, however, was still awaiting ratification by Spain, and did not become effective until almost exactly two years thereafter (February 22, 1821). See Hunter Miller, Ed., 3 *Treaties and Other International Acts of the United States* 3 (1933). Its statutory implementation was to take another seven years.

Congressional recognition of Spanish land titles in West Florida did not resolve disputes even as to Spanish land grants expressly recognized, for as already mentioned, the United States thereby merely renounced *its* claim to such lands as part of the public domain, leaving the resolution of conflicting claims to private adjudication. Since most of the grants recognized were town lots in Mobile (many of them with wharfage), and since Mobile under United States government and the rule of "King Cotton" quickly became a port ranking in importance only after New York and New Orleans, title to these lots was bitterly contested.

A comprehensive account of this litigation is provided by E. W. Faith, "Grant Law Suits Affecting

Mobile," 1 *Ala. Lawyer* 320, 329-42 and Appendix, at 345, listing 18 "Cases Covering River Front" (1940). The "most celebrated" of these cases is of course *Pollard v. Hagan*, U.S. (7 How.) 219 (1844), familiar to counsel through recent involvement in *Cinque Bambini Partnership v. State*, 491 S.2d 508 (Miss. 1986), aff'd sub nom. *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469 (1988). *Pollard* undercut the validity even of titles to tidal lands expressly confirmed by Congress after Alabama statehood.

We are concerned here, however, with a grant (or concession) filed with the Commissioner for the district East of the Pearl River but not recommended by him for confirmation by Congress and, in the event, not confirmed expressly by act of Congress. The law governing the continued validity of such titles after the change of sovereignty is found in the 1819 Treaty of Amity, Settlement, and Limits, as construed judicially (and for our purposes, authoritatively) by the Supreme Court of the United States.

4. Treaty Jurisprudence

Article 2 of the Treaty of Amity, Settlement, and Limits between Spain and the United States reads as follows:

> His Catholic Majesty ceded to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which

relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries or officers of the United States, duly authorized to receive them. 8 Stat. at 254.

Thus, East and West Florida (including adjacent islands) were ceded by Spain to the United States, but that cession did not as such transfer the ownership of "private property" in the cession area. The continued efficancy of Spanish-derived private rights thus implied was spelled out more fully in article 8, providing, in its English version:

> All the grants of land made before the 24th day of January, 1818, by his Catholic Majesty, or by his lawful authorities, in the said territories ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which, the said grants shall be null and void. All grants made since the said 24th of January, 1818, when the first proposal, on the part of his Catholic Majesty, for the cession of the Florida, was made, are hereby declared, and agreed to be, null and void. 8 Stat. at 258.

This text is, however, different from the (equally authentic) Spanish texts in some respects, to assume crucial importance soon thereafter. The Spanish text of article 8 of the 1819 Treaty with Spain reads as follows:

> Todas las concesiónes de terreños hechas por S. M. C. A. o por sus legitimas autoridades antes del 24 de Enero, de 1818, en los expresados territorios que S. M. cede á las personas que esten en posesion de ellas, del mismo modo que lo serian si S. M. hubiese continuado en el dominminio de estos territorios; pero los propietarios que por un efecto de las circumstancias en que se ha hallado la Nacion Española y por las revoluciones de Europa, no hubiesen podido llenar todas las obligaciones de las concesiónes, seran obligados á cumplirlas segun las condiciones de sus respectivas concesiónes, desde la fecha de este Tratado, en defecto de lo qual seran nulas y de ningun valor. Todas las concesiónes posteriores al 24 de Enero de 1818, en que fueron hechas las primeras proposiciónes de parte de S. M. C. A. para la cesión de las dos Floridas, convienen y declaran las dos altas partes contratantes que quedán anuladas y de ningun valor.

It will be seen that the Spanish version of this article makes the validity of grants (or concessions) such as the one here involved a virtual certainty. Not only did it expressly encompass *concessions* (*concesiónes*), but it also provided that all concessions made by Spanish authorities in the cession area before January 24, 1818 were to *remain* (*quedán*) ratified and confirmed. The English text of article 8, however, referred only to *grants*, and specified that

these "*shall be* ratified and confirmed" (emphasis added), thus suggesting that even the continued validity of "grants" was dependent upon affirmative action of the new territorial sovereign, the United States.

Even more disturbingly, as literally spelled out in article 2, the King of Spain had ceded only those territories "which belong to him" (*i.e.*, which belonged to him at the operative date of the cession). Both the President of the United States and Congress had maintained consistently since 1804 that West Florida between New Orleans island and the Perdido had passed to the United States with, and by virtue of, the Louisiana Purchase Treaty of 1803. It was possible to contend, therefore, that article 8 did not apply at all to Spanish grants (or concessions) in that area if made after the Spanish retro-cession of "Louisiana" to France (October 1, 1800).

Both of these arguments were made in *Foster v. Neilson*, 27 U.S. (2 Pet.) 253 (1829), where the validity of a land grant made by Spanish authority west of the Pearl River in 1805 was at issue. Chief Justice Marshall's opinion started with an analysis of the territorial claims of the United States to this area. He discussed these with little if any approval, *id.* 305-308, concluding nevertheless that the judiciary was bound by the position unequivocablly taken by the political departments of government. Essentially for the same reason, he construed article 2 of the 1819 Treaty to involve the cession of only those parts of the Floridas which, *in the view of Congress and of the President of the United States*, "belong(ed)" to the King of Spain after October 1, 1800. 27 U.S. (2 Pet.) at 310-311.

Chief Justice Marshall went on, nevertheless, to discuss article 8 of the 1819 Treaty. Relying exclusively on its English version, he wrote:

> The article under consideration does not declare that all the grants made by his Catholic majesty before the 24th of January, 1818, shall be valid to the same extent as if the ceded territories had remained under his dominion. It does not say that those grants are hereby confirmed. Had such been its language, it would have acted directly on the subject, and would have repealed those acts of Congress which were repugnant to it; but its language is that those grants shall be ratified and confirmed to the persons in possession, etc. By whom shall they be ratified and confirmed? This seems to be the language of contract; and if it is, the ratification and confirmation which are promised must be the act of the legislature. Until such act shall be passed, the Court is not at liberty to disregard the existing laws on the subject. *Id.* at 314-15.

Since the grant there involved had not been confirmed by or pursuant to legislation implementing article 8 of the 1819 Treaty, it was held to be of no legal effect. *Id.* at 315-16.

Four years later, in *United States v. Percheman*, 32 U.S. (7 Pet.) 51 (1833), Chief Justice Marshall had the opportunity to re-examine the question whether article 8 of the 1819 treaty was directly applicable ("self-executing," in today's parlance) by virtue of the Supremacy Clause of the United States Constitution, or whether it applied as domestic law only as and when implemented by acts of Congress. This time, the argument for direct applicability was presented

by Joseph M. White, the leader of the Spanish Florida claims bar and the author of *White's Recopilacion.* The United States was represented by Roger Taney, Attorney-General at the time. Mr. White's arguments are summarized 32 U.S. (7 Pet.) at 62-81. Not unexpectedly, he pointed out the difference in wording between the English and Spanish versions of article 8, urging the adoption of a construction in line with the Spanish version. *Id.* at 68-70.

This argument proved successful in good measure because Mr. White advanced it immediately after having invoked a more general principle of justice. "What indeed (he asked rhetorically) can be more clearly entitled to rank among things favourable than engagements between nations securing the private property of faithful subjects, honestly acquired under a government which is on the eve of relinquishing their allegiance, and confided to the pledged protection of that country which is about to receive them as citizens?" *Id.* at 68. That appeal was to strike a responsive chord. The eighth article of the 1819 Treaty, Chief Justice Marshall underlined, "contains stipulations respecting the titles to lands in the ceded territory." In words frequently quoted thereafter and still familiar to international lawyers today, he then continued:

> It may not be unworthy of remark, that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved: but their relations to each other, and their rights of property, remain undisturbed. If this be the modern rule even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. It would have remained the same as under the ancient sovereign. *Id.* at 86-87.

The cession of a territory "by its name and from one sovereign to another," he continued, "conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property." After pointing out that this principle was reflected in article 2 of the Treaty which had exempted "private property" from the cession, Chief Justice turned to the question (answered in the negative in *Foster* four years earlier) whether article 8 of the 1819 Treaty was self-executing. Once again, he referred to general international law:

> This article is apparently introduced on the part of Spain, and must be intended to stipulate expressly for that security to private property which the laws and usages of nations would, without express stipulation, have conferred. No construction which would impair that security

further than its positive words require, would seem to be admissible. Without it, the titles of individuals would remain as valid under the new government as they were under the old; and those titles, so far at least as they were consummate, might be asserted in the courts of the United States, independently of this article. *Id.* at 88.

Chief Justice Marshall then continued:

> The treaty was drawn up in the Spanish as well as in the English language. Both are originals and were unquestionably intended by the parties to be identical. The Spanish has been translated, and we now understand that the article, as expressed in that language, is, that the grants "shall remain ratified and confirmed to the persons in possession of them, to the same extent, etc."—thus conforming exactly to the universally received doctrine of the law of nations. If the English and the Spanish parts can, without violence, be made to agree, that construction which establishes this conformity ought to prevail. If, as we think must be admitted, the security of private property was intended by the parties; if this security would have been complete without the article, the United States could have no motive for insisting on the interposition of government in order to give validity to titles which, according to the usages of the civilized world, were already valid. No violence is done to the language of the treaty by a construction which conforms the English and Spanish to each other. *Id.* at 88-89.

In consequence, *Foster v. Neilson*, *supra*, was overruled on this point, and article 8 of the 1819 Treaty

was held to be directly applicable or, in present-day terms, self-executing. 32 U.S. (7 Pet.) at 89.

Since Juan Percheman's Spanish grant (or concession) was dated December 12, 1815 when Spain was uncontestedly the territorial sovereign of East Florida, there was no need to reconsider *Foster* more generally. There was, however, another point to be disposed of. Percheman had previously submitted his claim to the commissioners "for ascertaining claims and titles to lands within the territory of Florida" appointed under the Act of May 8, 1822, 3 Stat. 709, and these commissioners had *rejected* his claim. It was therefore contended by the United States that Percheman's claim had been "finally acted upon", (*i.e.*, denied), so that it could no longer be asserted judicially. 32 U.S. (7 Pet.) at 85-86. This contention seemed, at first glance, not implausible. Unlike the land commissioners east and west of the Pearl River appointed under the Act of April 25, 1812, 2 Stat. 713, who could only make recommendations to be "laid before Congress . . . for their determination thereon," the Florida commissioners had statutory authority to "give confirmation" to claims deemed by them to be valid under Spanish law. Act of May 8, 1822, Sec. 5, 3 Stat. at 717-18.

That quasi-judicial power of confirmation was limited, however, to claims involving not more than one thousand acres. In all other respects, the Act of May 8, 1822, followed the legislative precedent of the 1812 enactment summarized further above (pp. [137-140]). As pointed out by Chief Justice Marshall:

> It would seem from the title of the act, and from this declaratory section, that the object for which these commissioners were appointed, was the

> ascertainment of these claims and titles. That they constituted a board of inquiry, not a court exercising judicial power and deciding finally on titles. . . . . These commissioners seem to have been appointed for the special purpose of procuring promptly for congress that information which was required for the immediate operations of the land office. In pursuance of this idea, the second section directs that all the proceedings of the commissioners, the claims admitted, with those rejected, and the reason of their admission and rejection, be recorded in a well bound book, and forwarded to the secretary of the treasury to be submitted to congress. 32 U.S. (7 Pet.) at 90.

"Is it possible," he asked, "that congress could design to submit the validity of titles, which were 'valid under the Spanish government, or by the law of nations,' to the determination of these commissioners?" Even the fifth section of the act, he pointed out, only enabled the commissioners to confirm claims not exceeding one thousand acres. He then continued:

> From this view of the original act, it results, we think, that the object for which this board of commissioners was appointed, was to examine into and report to congress such claims as ought to be confirmed; and their refusal to report a claim for confirmation, whether expressed by the term "rejected," or in any other manner, is not to be considered as a final judicial decision on the claim, binding the title of the party; but as a rejection for the purposes of the act. *Id.* at 91-92.

Thus, *Percheman* laid down two basic rules governing the validity of Spanish land grants (or concessions) in the territories ceded by Spain to the United

States in the Treaty of Amity, Settlement, and Limits. First and foremost, 1819 Spanish grants (in Spanish: *concesiónes*) valid under Spanish law when made were confirmed in their validity by the direct application of principles of international law in conjunction with article 8 of that treaty. Secondly (but not secondarily for present purposes) even the prior rejection of claims based on such grants (or concessions) by land commissioners appointed under United States legislation did not stand in the way of their subsequent *judicial* affirmance on a finding that they were valid under Spanish law.

Percheman did not, however, overrule *Foster v. Neilson* in so far as it had held that under United States law, Spanish grants made west of the Perdido after the conclusion of the Treaty of San Ildefonso (October 1, 1800) were invalid. That point was reargued in *Garcia v. Lee*, 37 U.S. (12 Pet.) 511 (1838), involving a Spanish public land sale in land west of the Pearl River in 1806. The Supreme Court adhered to its prior decision in *Foster* that dispositions of public lands in that are a after October 1, 1800 were invalid. *Id.* at 521-22. *Percheman*, it spelled out, had overruled *Foster* only on the "words of the eighth article of the treaty," holding "that the words used, were words of present confirmation by the treaty, where the land had been rightfully granted before the cession; and that it did not need the aid of an act of congress to ratify and confirm the grant. *This language was, however, applied by the Court, and intended to apply to grants made in a territory which belonged to Spain at the time of the grant.*" 37 U.S. (12 Pet.) at 511 (emphasis supplied).

It is believed that the sentence just emphasized is dispositive of the instant case. Since the Mobile District (and Horn Island) "belonged to Spain [by conquest] at the time of the grant," the validity of the grant (or concession) of that island on August 1, 1781 by Governor General Bernardo de Galvez to Catarina Boudreau is governed by Spanish law applicable in West Florida, as that law stood until the retrocession of "Louisiana" by Spain to France in the Treaty of San Ildefonso on October 1, 1800. If under that law, Horn Island was granted validly in private property, it follows necessarily that this island did not subsequently pass into the public domain of the United States.

That latter consequence, too, is spelled out in the well-known case of *United States v. Arredondo*, 31 U.S. (6 Pet.) 691, 717 (1832), where the Court said:

> From a careful examination of the whole legislation of congress on the subject of the Louisiana and Florida treaties, we cannot entertain a doubt that it has from their beginning been intended that the titles to the lands claimed should be settled by the same rules of construction, law and evidence, in all their newly acquired territory. That they have adopted as the basis of all their acts, the principle that the law of the province in which the land is situated is the law which gives efficacy to the grant, and by which it is to be tested, whether it was *property* at the time the treaties took effect.
>
> The United States seem never to have claimed any part of what could be shown by legal evidence and local law to have been severed from the royal domain before their right attached.

Returning to this last point, the Court spelled out once more, *id.* at 735, that "no land which had been severed from the royal domain by antecedent grants, which were valid by the laws of Spain, and created any right of property to the thing granted in the grantees; passed to the United States." To put it more directly: If the grant (or concession) of Horn Island by Governor General Galvez to Mrs. Boudreau in 1781 was valid under Spanish law applicable then and there, Horn Island did not become part of the public lands of the United States when Sovereignty over Horn Island passed to the United States.

Before proceeding to the description and evaluation of that grant, it should be pointed out that "Spanish law" as employed herein in that context refers, of course, not to present-day Spanish law, but to the law of Castile and of the Indies as in force in Spanish North America at the appropriate time and place. That law is no longer in force in Spain itself, and it is applicable today to the case at hand as the law of a former sovereign of what is now part of the United States, *i.e.*, as *domestic* law within the judicial notice of federal courts. See most recently *Summa Corp. v. California ex rel. Lands Comm'n*, 466 U.S. 198, 201-202 note 1 (1984) and cases there cited. It follows that United States Supreme Court cases expounding that law in East and West Florida land grant cases are highly persuasive (if not controlling) authority. I have therefore relied on these authorities when in point and where not manifestly in need of reexamination.

II

THE HORN ISLAND GRANT

1. Description

An English translation of a grant (or concession) by Governor General Bernardo de Galvez to Catarina Boudreau has been located in Volume 203, Land Claims east of the Pearl River, Evidence Book B, in the National Archives, Washington, D.C., where it is designated Item 126. It commences with an undated notice "To the Commissioner of Land Claims East of Pearl River" of a claim by E. Lewis (as agent of the heirs of Catalina Vincenarde Widow Boudreau) to a tract of land called Horn Island in Pascagoula Bay by virtue of a grant from the Spanish government, dated New Orleans August 1781, "as will appear by the grant hereto annexed."

The English translation, presumably of that "grant hereto annexed," starts with an application to the Governor General by John Badida Bodro, dated New Orleans, July 3, 1781, on behalf of "Catarina Bodro, an Inhabitant of Pascagoula." This application recites that when Catarina Bodro was in Mobile, the Governor General had offered to give her Horn Island, and "supplicates" him to grant her that island. This is followed by a short entry dated July 4, 1781, and signed "Galvez," stating that since the applicant was petitioning for land in the "District of Mobile," she was to apply to the Commandant of that place, so that he would be informed and could proceed as provided by law.

The next entry, signed by Henrique Grimarest and dated Mobile, July 21, 1781, states that the island which the claimant solicited, and which was represented "on the annexed plat," consisted of "pasture and trees," and was a "Royal possession." Then follows a sketch of the island, with a note translated from the French. It describes the island as being "about six leagues, or more," in length but of widths varying between one quarter to more than half a league." The passage immediately following in this translation from the French reads as follows: "There was a time, when 10 or 12 English people, worked to form a Company to establish a Cow pen, the present Island, of which W. Grant was one, but that did not take place, and today it only recognized as a property belonging to his Catholic Majesty."

The next entry, which is the last one in Item 126, is dated New Orleans, August 1, 1781. It is signed by Bernardo de Galvez, attested by Andres Armesto, and sealed. It reads as follows:

> Bernard de Galvez, a pensioned Knight of the Royal distinguished Spanish Order of Charles the third, Colonel of the Royal Army, Governor, intendent and Inspector General of this Province of Louisiana.
>
> Having seen the preceding documents (diligencias) executed by Lieut. Colonel Henry Grimarest, Commandant of the Town of Mobile & to the profession which he has given to Catharine Vincenarde, Widow Beaudreaux of the Island commonly called Horn-Island, situated upon the Coast of Mobile running from East to West, containing about six leagues, as exhibited in the accompanying plat. And acknowledging to the conformable to the order of Survey, without causing prejudice to the aforesaid Inhabitants, which

they neither have claimed rather consented as their assistance justifies said operations. Approving of them as we approve of them. USING the authority which the King has conferred to us we grant in his Royal name to the said Catharine Vincenarde, Widow Beaudreaux, the said Horn Island situated upon the aforesaid Coast of Mobile, that as her own she dispose of and enjoy it governing herself by said Documents (diligencias) and conforming to all that is required (lo dispuesto) by the regulation of this [gap] We Give the present signed by our hand, sealed with the Seal of [illegible] and countersigned by the underwritten Secretary for his Majesty's Government in New Orleans 1st August 1781.

As indicated by the first operative sentence of this last entry, and as readily apparent to those familiar with Spanish administrative proceedings, these five entries are part of the same dossier on file, usually called *expediente*, recording proceedings pertinent thereto (*diligencias*) in chronological order. The sequence of proceedings from the initial application through the final action thereon by Galvez followed standard practice by the Governor General of Spanish Luisiana, as shown by the following passage from a report by Juan Ventura Morales, dated New Orleans October 16, 1797 and reproduced in 2 *White's Recopilacion* 472, 474:

> In order to obtain lands from the exchequer, (*fisco,*) the custom is still pursued which prevailed when the French were masters of the country, except in so far as that the government and the intendency acted in concert; and no other form is or has been observed, than the presentation of a

> memorial by the petitioner, praying for a certain number of *arpents*, and designating their location. In virtue of this, the surveyor or commandant of the post, with the assistance of the neighbours, makes the survey; and if not objection be offered, puts the person in possession, and gives him the papers necessary for having his title drawn out: this title is issued upon the strength of these papers, a minute of it being preserved in the office, in order that it may be noted in the book of grants: the sum which is to be paid to the surveyor or commandant, for his trouble, is then delivered or put aside; and the duty of five per cent, for office fees being retained, the petitioner remains in full and quiet possession of the quantity of land which it may please the governor to grant him; I say "which it may please the governor to grant," because, although there be a general rule, by which no person can have more than a certain number of *arpents* granted him, if for agriculture, and half a league in front if for grazing, this rule has not been followed with so much exactness that there have not been some exceptions: and, on the other hand, those who wished to have a larger quantity than the government seemed willing to grant, have not neglected to employ means for arriving at the end, at the expense of their own good faith.

The limitation of the quantity of grants to "half a league in front if for grazing" mentioned in the passage just quoted serves to focus attention on a feature of the Horn Island grant (or concession) that emerges on closer examination. This was clearly a grazing grant. The Post Commandant described Horn Island

as consisting of "Pasture & Trees," and the surveyor's French-language field notes referred to a "Cow pen" which some English people had contemplated setting up on the island.

That was, apparently, a permanent feature, for more than three decades thereafter, Commissioner Crawford reported that "Cattle have been generally kept upon the island, and formerly negros attended them, but not inhabited or cultivated." (*Supra* p. [140]). Although detailed legal evaluation is postponed at this point, it is worth noting here that the standard unit of the cattle grant in Spanish North America was the Spanish league (or *sitio*) of 5,000 varas square (4,428 acres), and frontage limitations did not, of course, apply where a whole island was granted for grazing. Neither was there a tradition of "inhabitation and cultivation" of ranching grants, except perhaps for cattle barons: the normal rancher lived in the *villa* or *pueblo*, ran his cattle on the open range, and corralled, branded and watered them on his spread.

Turning to personalia, we meet familiar figures in familiar places. Bernardo de Galvez was Governor General of Spanish Luisiana from May 8, 1779, to July 30, 1786. 2 *White's Recopilacion* 449. He was indeed in Mobile in 1780 so that Catarina Boudreau could meet him there: he was in personal command of the Spanish forces which captured Mobile on March 14, 1780 (*supra* p. [129]). Between June 23 and August 23, 1781, he signed several instruments in New Orleans, later described as "patent or title" or "title in form," all of which were later deemed to be valid grants by the Registrar of the Land Office at Opelousas in a report of October 1, 1825, reprinted in American State

Papers, 4 Public Lands 490, 492-93 & 506 (1859). Henrique Grimarest was appointed commandant of Mobile Post on March 16, 1780, immediately after the establishment of Spanish rule. A sworn account of his fiscal administration while commandant of the Mobile District covers the period of April 17, 1780, to May 7, 1783, and three years thereafter, we find him (promoted to full Colonel) as commandant of Coumpeche in the Yucatan. (Manuel) Andres (Lopez de) Armesto was Secretary of the Spanish Government from 1780 to at least 1788, as also appears from papers of the Audiencia of Santo Domingo in the Archivo General de Indias in Seville, available on microfilm at Loyola University of New Orleans and conveniently accessible through the index of J. de la Peña, E. Burrus, C. O'Neill & M. Garcia, *Catalogo de Documentos del Archivo General de Indias (Sección V, Gobierno. Audiencia de Santo Dominto) sobre la época española de Luisiana (1969) (2 vols.).*

Another feature of the Boudreau grant (or concession) worth mentioning here is the translation of the surveyor's field notes from the French rather than the Spanish. Mobile, we saw, was originally a French settlement, and the Francophone population, being Roman Catholic, was not expelled after the conquest of West Florida by Spain. As stated by J. L. Wright, Jr., *Florida in the American Revolution* 142 (1975): "Almost without exception, British subjects had evacuated Pensacola, while at Mobile, though the English-speaking populace departed, the Frenchmen there and around Lake Pontchartrain stayed." The result was, apparently, the same as it had been in Spanish Luisiana after O'Reilly's takeover in 1769-70: Official communications between New Orleans and

the Posts were conducted in Spanish in both directions, since Lt. Col. Grimarest was a Spanish officer, but French remained the language of the "living law" at the Posts for lesser officials. For detailed documentation of this phenomenon, see Baade, "Marriage Contracts," *supra*, 53 *Tulane L. Rev.* at 57-73.

In Mobile, in particular, "the French language continued to be used in legal proceedings along with Spanish until some time in the 1790s." *Zahendra, Spanish West Florida, supra*, at 100, with reference.

If it is recalled that the Boudreau *diligencias* were filed with Commissioner Crawford some time between the latter part of 1812 and the date of his report (January 5, 1816), it seems unlikely in the extreme that as historically accurate and artful a document could have been concocted at the time. Spanish officials were then still in control of the Spanish archives of West Florida in Pensacola (the provincial capital), which were not surrendered to General Jackson together with that Province on July 17, 1821, see the protocol of delivery of possession, 2 *White's Recopilacion* 223, 224. Furthermore, while there were abundant allegations of forgery of land grant papers in *East* Florida a few years later, see P.W. Gates, *History of Public Land Law Development* 111 (1968) and H. J. Doherty, Jr., *Richard Keith Call, Southern Unionist* 57-69 (1961), I am aware of no such assertions about Spanish land titles in the Mobile District.

It is my opinion, therefore, that the paper writing described as the "grant hereto annexed" in the application of E. Lewis to Commissioner Crawford on behalf of the heirs of Catarina Boudreaux is highly likely to have been the actual record of *diligencias* for

the grant of Horn Island, pursued to conclusion on behalf of Catarina Boudreau before the Spanish authorities in 1781. Both the status of the translation of the *diligencias* as evidence before United States court today and their effect on title to Horn Island at the time of their consummation, however, require separate discussion.

2. Formal Proof

The above description is based on an English translation of the *diligencias* concerning the Boudreau grant (or concession), found in Volume 203, Land Claims East of the Pearl River, Evidence Book B, Item 126 (National Archives, Washington, D.C.). As received and archived originally, it was part of the record documentary of the first Report of the Land Commissioners East and West of the Pearl River, on Private Land Claims, of January 5, 1816, reproduced in 3 American State Papers, Public Lands 7 *et seq.* (1834). The claim of the "Heirs of Catherine Boudreau" which appears there as Item 51 on p. 15 describes the property as being "6 leagues in length, with various widths," situated in the "Gulf of Mexico," but does not identify it as Horn Island.

The report just quoted was prepared by William Crawford, one of the two Land Commissioners East and West of the Pearl River appointed pursuant to Act of Congress of April 25, 1812, 2 Stat. 713. (He was the Land Commissioner East of the Pearl River.) Pursuant to Section 1 of the Act of April 25, 1812 which created his office, Commissioner Crawford was authorized to "appoint a clerk, capable of translating the French and Spanish languages, who shall . . . perform the duties of translator," when so required by the Commissioner. Like the Commissioner, the

clerk had to take an oath or affirmation before entering upon the duties of his office, truly and faithfully to execute the duties imposed upon him by that enactment.

Section 2 of the Act of April 25, 1812, directed the Commissioner, together with his clerk, "to attend in each of the several parishes in his district, at such time and place therein as he shall appoint, for the purpose of receiving notices and evidences of titles and claims to lands within the same." Section 3 dealt with notice to claimants. Section 4 started by providing that "every person claiming lands in the tract of country aforesaid, by virtue of any grant, order of survey, or other evidence of claim whatsoever, derived from the French, British, or Spanish governments, shall deliver to the commissioner for land claims, when attending for the purpose, in the parish in which the lands claimed may lie, a notice in writing, stating the nature and extent of his claims, together with a plat (in case a survey shall have been made) of the tract or tracts claimed." It then went on to require every claimant to "deliver to the commissioner, when attending as aforesaid, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim." These writings were to be "recorded by the clerk, in books to be kept for that purpose, on his receiving from the party or parties at the rate of twelve and an half cents for every hundred words contained in such written evidence of their claim."

In the case of lands "claimed by virtue of a complete French, British, or Spanish grant," it was not necessary for the claimant "to have any other evidence of his claim entered at large on the record, except the

original grant or patent, together with the order of survey, and the plat." The penalty for failure to record claims as thus specified was substantial: a person failing to do so was *never* to have his claim recognized or confirmed by the United States, and no "grant, order of survey, deed, conveyance, or other written evidence, which shall not be recorded as above directed, (was) ever after (to) be considered or admitted as evidence in any court of the United States, against any grant which may hereafter be derived from the United States."

It follows that the paper writing recorded as Item 126 in Volume 203, Land Claims East of the Pearl River, Evidence Book B, is a translation from the French and Spanish, made by a public official of the United States in the course of his official functions from papers submitted to him as required by law, and recorded by him in a "book(.) kept by him for that purpose" as mandated by Act of Congress. It is, however, not the original of a Spanish grant (or concession), and it is a translation—albeit one by an official translator sworn to do his duty in this respect—what is called in *United States Delespine's Heirs*, 37 U.S. (12 Pet.) 654 (1838) "the original translation" of a paper writing in Spanish submitted to the Land Commissioners.

It was held in *Delespine*, *supra*, that such a translation was admissible evidence in proof of a Spanish grant (incidentally, for forty-three thousand acres), where there was also proof that this translation was the best evidence "which could be given of the existence of an original paper lost or destroyed." 37 U.S. (12 Pet.) at 655-56. In that case, there was proof of loss of the original.

The fate of the Spanish archives of West Florida is chronicled by Irene A. Wright, "The Odyssey of the Spanish Archives of Florida," in A. C. Wilgus, Ed., *Hispanic American Essays, A Memorial to James Alexander Robertson* 169-201 (1942). The author states, *id.* at 169 note*: "This paper is part of a report made in the course of my work as associate research expert, Division of Reference, in the National Archives—a term more applicable to the collections within the building than to the institution itself."

Within a few years after the United States received custody of the Spanish archives of West Florida at Pensacola on July 17, 1821, *id.* at 169-70, Congress authorized the appointment of two keepers of the public archives of the (then) Territory of Florida, located at St. Augustine in East Florida and at Pensacola in West Florida, respectively. Act of March 3, 1825, sec. 9, 4 Stat. 125, 126. Pursuant to section 11 thereof, *id.* 126, these keepers of the public archives were to make "a faithful and complete translation and record of all the Spanish records, and documents delivered to them, and having relation to land claims derived from the Spanish and British governments, distinguishing and keeping separately those which relate to grants made within the district of Baton Rouge, Mobile, north of latitude thirty-one, and those made within the present limits of Florida." (emphasis added). A full and complete descriptive list of these translations and records, when completed, was to be forwarded to the Secretary of the Treasury.

Joseph E. Caro was appointed keeper of the public archives of West Florida on March 7, 1825. Wright at 183. As stated by Wright at 183-84:

> Under date of December 12, 1818, Caro sent to Richard Rush, secretary of the treasury, partial results of his labors in "a general abstract lettered A containing a descriptive list of all the Spanish records and documents having relation to land claims, duly translated and recorded in the first volume of the Record Book containing five hundred and sixteen pages, beginning on the 17th day of May 1871 and ending on the 6th day of October 1815." On January 2, 1829, he sent the conclusion of the work in a similar abstract, to August 16, 1822. Both he duly certified, and these, bound together in one volume entitled "Abstract (A) of West Florida Archives" and numbered 3, are now in the files of the General Land Office, Department of the Interior. (Footnotes omitted).

It is believed that this set of records contains the English translation of the Boudreau *diligencias* here discussed.

The Spanish West Florida archives themselves remained in Caro's custody in Pensacola until his death (1860?). They were removed from Pensacola for safe keeping to Greenville, Alabama when Pensacola was evacuated by the Confederates. *Id.* 190-91. When returned to Pensacola after the war, they included "five leather-bound volumes containing records of the original documents which on being presented to the board of commissioners were recorded by them and the original papers retained by the parties interested, 138 leaving no original documents in the custody of the keeper of the Spanish archives." Wright at 193, adding in note 138: "Or as elsewhere stated, sent to the General Land Office."

This set of records is likely to have contained the official transcript, *in Spanish*, of the Boudreau *diligencias*. It perished, together with the remaining Spanish West Florida archives, at a "great fire" in 1885. *Id.* at 196.

Thus, it is no longer possible to reconstruct, through archival research, the Spanish archives of West Florida, including those of the Mobile District. The paper writings in the Evidence Books for Land Claims East of the Pearl River which are currently in the National Archives are quite literally the "best evidence" of these records in so far as they pertain to Spanish land grants and concessions. It follows that the English translation of the Boudreau *diligencias* recorded in those Evidence Books is admissible in evidence of the original 1781 grant or concession on the direct authority of *United States v. Delespine's Heirs*, 37 U.S. (12 Pet.) 654 (1938), *supra* p. [167]. See also, to the same effect, *Texas Mexican Railway Company v. Jarvis*, 69 Tex. 527, 538-39, 7 S.W. 210, 215-16 (1888). This paper writing is also self-authenticating under Federal Rule of Evidence 901(b)(7), and within judicial notice under Rule 201(b), see *Massachusetts v. Westcott*, 431 U.S. 322, 323 note 2 (1977).

3. Legal Effect

It should be recalled that Mr. Beggerley, on whose behalf the present memorandum has been prepared, founds his claim to part of Horn Island on purchases at tax deficiency sales from the State of Mississippi, and not on the grant (or concession) of the island on August 1, 1781, by Governor Galvez to Catarina Boudreau. That grant (or concession) is, however, crucial to his assertion of title as against the United States,

for unless Horn Island passed out of the public domain of a prior sovereign before the United States became the territorial sovereign of the portion of Spanish West Florida (or of retroceded French Louisiana) encompassing Horn island, it passed automatically to the United States by state succession.

The alternative between private and public lands is a stark one, reflected both by articles 2 and 3 of the Louisiana Cession Treaty of 1803 and articles 2 and 8 of the 1819 Treaty of Amity, Settlement, and Limits with Spain, *supra* pp. 10, 13-14-15, & 20. The crucial operative dates are brought into focus by the judicial endorsement of the assertion of the United States to sovereignty over Spanish West Florida between New Orleans and the Perdido River. In short, the United States does not recognize any Spanish land grants (or concessions) in this area if made on or after October 1, 1800. It does, however, recognize (as it is obligated by both treaties to recognize) Spanish land grants (or concessions) in the portion of West Florida as just defined, if complete *before* October 1, 1800, with the result that the lands thereby transferred out of the Spanish public domain and transmuted into private property did not become part of the public lands of the United States through state succession. This is, however, subject to the qualification that any such lands which reverted to the Spanish (or French) public domain before the effective date of the Louisiana Cession (December 20, 1803) were incorporated into the public lands of the United States on that date.

We are thus faced with two questions. First and foremost, did the grant (or concession) of Horn Island by Governor Galvez to Catarina Boudreau, under Spanish law as in effect in Spanish West Florida at

the appropriate time, operate to sever that island from the Spanish public domain? Secondly, and again under the same law, did Horn Island revert to the Spanish public domain before October 1, 1800 or, perhaps, November 30, 1803 (the effective date of the retrocession of "Louisiana" from Spain to France)? These two questions will be discussed here in the order just indicated.

We start with the last entry in the English translation of the Boudreau grant (or concession) *diligencias*, reproduced *supra* [pp. 156-157]. It will be seen that Governor Galvez' recital of prior steps in this matter is, in two respects, not supported by prior entries in this dossier, or *expediente*. First, contrary to what is said in the first sentence of the concession (or grant) of August 1, 1781, there is no record showing that the post commandant, Henrique Grimarest, had "given" possession of Horn Island to Catarina Boudreau. Secondly, it is stated that no prejudice was caused to the "aforesaid" inhabitants (of the Mobile District) as they had not claimed Horn Island for themselves but "consented as their assistance justifies"—*i.e.*, as shown by their participation in the act of possession, which, however, is *not* recorded in the expediente.

The explanation is simple: The Governor General (and Intendant) was following from precedent, and was assuming compliance with custom and regulations followed in Spanish Luisiana in similar cases. The pertinent custom is sketched in the letter by Juan Ventura Morales, quoted *supra* at pp. [157-158]. The regulations followed in land grant cases in Luisiana under direct Spanish rule are those proclaimed by Alejandro O'Reilly on February 18, 1770, and

reproduced in English translation in 2 *White's Recopilacion* 228-31. The essential procedural steps to be followed in land grants are set forth in article 12 of these Regulations, which reads as follows:

> All grants shall be made in the name of the king, by the governor general of the province; who will, at the same time, appoint a surveyor to fix the bounds thereof, both in front and depth, in presence of the judge ordinary of the district, and of two adjoining settlers, who shall be present at the survey. The above-mentioned four persons shall sign the verbal process which shall be made thereof, and the surveyor shall make three copies of the same, one of which shall be deposited in the office of the scrivener of the government, and cabildo, another shall be delivered to the governor general, and the third to the proprietor, to be annexed to the titles of his grant. *Id.* at 230-31.

As will be seen, Commandant Grimarest and the (unnamed) surveyor omitted the step of summoning two "adjoining settlers" when putting Mme. Boudreau in possession, and of recording this act in a *procés-verbal* signed by the two officials along with the two neighbors. This omission was probably due in part to the unfamiliarity of these officials with the text of the Regulation just quoted and with Spanish land-grant practice in general, as shown by the use of the French language by the surveyor in his field notes (Grimarest, obviously affluent in Spanish, was a carer infantry officer). Omitting these formalities was also, in the event, quite harmless, for an island some ten miles off the shore and granted *in toto* has no "adjoining settlers" to be put on notice of the new

arrival so as to have an opportunity to assist in the demarcation of the respective adjoining estates.

The second sentence of article 12 of O'Reilly's 1770 Regulations quoted above lends substantially to an understanding of the two last operative clauses immediately preceding the signature and attestation clause (starting with "We Give") in the instrument signed by Governor General Galvez on August 1, 1781. These are the *habendum* clause and the documentation clause. The habendum clause starts, as was usual at the time, with a word written in bold script (USING) here rendered in capitals. It is separated from the documentation clause ending with a word which I have been unable to decipher, but both of these tasks are rendered relatively simple in the light of the text of article 12 of O'Reilly's above-cited Regulation.

That is obviously the "Regulation of [better: on] this *subject*" referred to at the end of the documentation clause. As stated in article 12, one of the three copies of the *procés-verbal* was to be given to the "proprietor, to be annexed to the titles of his grant." The purpose is clear. The survey and plat, annexed to the concession, were to be the title documentation of the grantee. The grant (or concession) was the sovereign decision severing the land described in the survey and plat from the Royal domain (*realengos*) and transferring ownership thereof to the grantee. The grant (or concession) incorporated the survey and plat by reference but not textually. Both documents were needed, therefore, by the grantee to prove his title and the boundaries thereof.

It is also quite clear that the documentation thus regulated is of a *grant*, to be used if necessary by the

proprietor. This is stated in so many words in the translation of article 12 of O'Reilly's Regulation in 2 *White's Recopilacion* at 231. Without present access to the Spanish text thereof, I am confident that the former term was *concesión* (as it later was to be in the Spanish version of article 8 of the 1819 Treaty), and the latter term, *propietario*.

It follows that the key words in the *habendum* clause: "we grant in his Royal name to the said Catharine Vincenarde, Widow Beaudreau, the said Horn Island situated upon the aforesaid Coast of Mobile, that as her own she dispose of and enjoy it," are words of Royal grant *de praesenti*. These key words are "we grant" and "her own," reading *concedemos*" and *su propio* in the original in Spanish grants at the pertinent time and place, the latter tying directly to *propietario* in article 12 of the above quoted Regulation. The former of these terms was not in any way inferior to the English term, "grant": *concesión* was at the time the Spanish equivalent of the noun, "grant," and *concedemos* was translated quite accurately by the clerk-translator of Land Commissioner William Crawford as "we grant." A like instrument, executed by Governor Galvez in New Orleans barely over three weeks later, on August 23, 1781, in favor of Narcisse Carriere, was later described as the Land Register of Opelousas as "a complete Spanish Grant, the most authentic and complete that is known—It is therefore recommended for confirmation." American State Papers, 4 Public Lands at 506.

Nevertheless, as shown by the tabulations used by Commissioner Crawford in his First Report of January 5, 1816, he classified the Boudreau *concesión*

as a "concession," although he also employed the word "grant" in other contexts. This may merely reflect a schematic classification according to the form of the title paper (or papers), with "grant" describing English-style self-contained documents in the style of a charter, and "concessions," composite title documentations. There is, however, the possibility that Commissioner Crawford deemed "concessions" to be of lesser finality than "grants."

An argument along these lines was later put by counsel for the United States in a number of East Florida cases. (R. K. Call), Argument of Counsel for the United States in *United States v. Clark(e) Huertes, Hernandez et al.*, much later reprinted in American State Papers, 8 Public Lands 289-96 (1861). It was summarily rejected in *United States v. Clarke*, 34 U.S. (9 Pet.) 168 (1835). Speaking through Chief Justice John Marshall, the Court said: "The validity of concessions is, we think, expressly recognized both in the [1819] treaty and in the several acts of Congress."

It follows that the Boudreau *diligencias* officially transcribed in English translation into Item 126, Evidence Book B, Land Claims East of the Pearl River, documented a complete grant *de praesenti* severing Horn Island from the Spanish royal domain and transmuting it into privately owned property. There remains the possibility, however, that this grant was invalid as in violation of Spanish law binding at the time on Governor General Galvez, or that the land then granted was subsequently reincorporated into the Spanish public domain through forfeiture or abandonment. Both of these alternatives are suggested, in a general manner, by Commissioner

Crawford, who stated with respect to the 111 claims (including that of the heirs of Ms. Boudreau) not recommended by him for confirmation: "The preceding claims are forfeited—most of them under the Spanish law, for want of inhabitation and cultivation; and do not appear to be entitled to confirmation under any law of the United States. A few are derived from officers who had no right to grant, or, at most, not in so extensive a scale." First Report, at 17.

We are concerned here initially with the possibility that Governor General Galvez did not have "the right to grant . . . on so extensive a scale." (He obviously had the right to grant.) Horn Island is shown by the survey to be "about six leagues, or more" in length but of width varying between one quarter to more than half a league. Assuming its average width to be one-third of a league, its dimensions in Spanish nomenclature then in use were about two square leagues—two *sitios* of 5,000 varas square or possibly slightly more (or less): between 8,856 and, perhaps, 10,000 acres of Anglo-American surface measure. When it is recalled that this was a grazing grant, its size does not seem extravagant. The normal unit of a cattle-grazing grant (*sitio de ganado major*) was a *sitio*, or square Spanish league.

Article 8 of O'Reilly's 1770 Regulations, 2 *White's Recopilacion* at 230, provided only that "No grant in the *Opelousas*, *Attacapas*, and *Natchitoches*, shall exceed one league in front by one league in depth" (emphasis added)." No such restriction applied to cattle grazing grants in the newly conquered province of West Florida. In any event, as noted by the intendant-to-be in 1797, limitations laid down by O'Reilly's 1770 regulation were "not followed with

such exactness that there were not some exceptions." Morales, quoted *supra* at [157, 158]. For instance, a grant of some 5,876 acres in Natchitoches was reported as valid by the Land Register at Opelousas in reliance of the testimony of Felix Taudeau that "grants of land, now generally two leagues each or more, in that part of the Spanish province, were granted to all who demanded them by the governors of provinces; never less than one league square was granted." Claim of C. Pavie & C. Noyrit for "Los Llanos," American State Papers, 4 Public Lands at 508, 509.

This matter is, moreover, concluded by authority. As stated in *United States v. Arredondo*, 31 U.S. (7 Pet.) 691, 720 (1832):

> The validity and legality of an act done by a governor of a conquered province depends on the jurisdiction over the subject matter delegated to him by his instruction from the king and the local laws and usage's of the colony, when they have been adopted as the rules for its government. If any jurisdiction is given, and not limited, all acts done in its exercise are legal and valid; if there is a discretion conferred, its abuse is a matter between the governor and his government.

Even more directly to the point, it was held by John Marshall in *Delassus v. United States*, 34 U.S. (9 Pet.) 117, 135 (1835), that O'Reilly's [1770] regulations "were intended by the general government of subordinate officers, not to control and limit the power of the person from whose will they emanated," *i.e.*, the Governor General of Spanish Luisiana. So far as I can determine, no grant by an official of that or of comparable rank has been held invalid by the Supreme

Court of the United States. Further authority in point is cited *id.* at 134. In *United States v. Rodman*, 40 U.S. (15 Pet.) 130, 138 (1841), the Supreme Court upheld the validity of a Spanish grant of five square miles, vastly in excess of the quantity indicated by the Royal Order in reference to which it was made. As stated by Mr. Justice Wayne:

> That the Governor had the power to make the larger grant, cannot be denied. It is to be found in the laws of the Indies, in the various regulations under which they granted lands in Florida, for more than forty years; sanctioned by the king of Spain, and the authorities representing him in Cuba, the Floridas, and Louisiana. The power of the governor, in this respect, has been frequently affirmed by the decisions of this Court, in cases growing out of claims to land under the eighth article of the treaty with Spain.

4. "Forfeiture" or Abandonment

It follows from the above discussion that the "concession" signed by Governor General Galvez on August 1, 1781 was, in conjunction with the survey and plat incorporated therein by reference and physically attached thereto in the same *expediente*, a valid grant of Horn Island under the law applicable at the appropriate time and place. As such, it severed Horn Island from the Spanish crown lands (*realengos*) and transmuted it into private property.

This leaves for final discussion the question whether, under the law of a former sovereign applicable at the appropriate time and place, Horn Island was re-integrated into the public domain of such former sovereign so that it became part of the public lands of

the United States when this country acquired dominion over Horn Island. Commissioner Crawford based himself on the assumption that there was a rule of Spanish law so providing. His main reason for *not* recommending 111 "claims, of various dimension for confirmation" was that they had been "forfeited—most of them under the Spanish law, for want of inhabitation and cultivation." American State Papers, 3 Public Lands at 17 (1836).

Inhabitation and cultivation, we saw much further above, were key terms used by the Act of April 25, 1812 under which Commissioner Crawford conducted his operations. Section 5 of that act, quoted *supra* p. [138], directed the commissioners to "ascertain, *in every case*, whether the lands claimed have been inhabited and cultivated," and also "at what time such inhabitation and cultivation commenced" (emphasis added). Thus, the Commissioners were expressly directed to determine the inhabitation and cultivation *vel non* (and if so, the date of commencement thereof) even as to land claimed under valid and complete Spanish grants. That statutory mandate apparently led the commissioner to the assumption that "inhabitation and cultivation" were, *under Spanish law*, pervasive and indispensable preconditions for the continued validity of complete land grants, or that the United States was (and would remain) free, under international law, to condition its recognition of valid and complete Spanish land grants on the "inhabitation and cultivation" of the land granted. Both of these assumptions would have been in error—the latter excusably so, because the Treaty of Amity, Settlement, and Limits with Spain was not even signed until 1819, and because the clarifying jurisprudence of the Supreme Court as to the significance of that treaty for the continued validity of Spanish land grants commenced more than a full decade thereafter.

First, as to Spanish land grants under Spanish law: Article 2 of O'Reilly's 1770 Regulations obligated new settlers receiving lots of six or eight arpents frontage along the Mississippi to build levees and drainage ditches, and to clear the whole front of their lands to a depth of two arpents within three years of obtaining possession. In default of fulfilling these obligations, it provided, "their land shall revert to the king's dominions and be granted anew." 2 *White's Recopilación* 228, 229. The reason for this draconic provision in simple, and stated tersely by Mr. Justice Catron in *Jourdan v. Barrett*, 45 U.S. (4 How.) 169, 180-81 (1846): "Annually the Mississippi overflows, and to prevent inundation of the country, heavy and expensive embankments are required . . . The country would be worthless without them."

No comparable obligations were attached, however, to grazing grants, measured in leagues rather than arpents. See article 8 of the Regulation, 2 *White's Recopilación* at 230. Obviously, Horn Island needed neither levees nor frontage clearing for use of a cattle ranch. That it was so used is shown by the entry in the When, By Whom, and Cultivation columns in Commissioner Crawford's report on the claim of the Heirs of C. Boudreau, in right of Catalina Boudreau, No. 51 on p. 15 of his First Report as published in American State Papers, 3 Public Lands (1834). That entry, to repeat, reads as follows: "Cattle have been generally kept upon the island, and formerly negros to attend them, but not inhabited or cultivated." Put more directly, Horn Island was used by, or by license

of, its grantee, who "formerly" exhibited direct possession by "keeping" slaves as cattlemen on the island.

Thus, the record suggests that Catarina Boudreau, or her heirs, fulfilled whatever implied obligations a cattle rancher might have had at the time to maintain the validity of his grant. This question has, however, been rendered moot by subsequent authority. It was later argued by counsel for the United States that Spanish land grants carried with them implied conditions of use for the purpose expressly applied for, but even this argument was curtly rejected by the Supreme Court. As the Court stated, in *United States v. Segui*, 35 U.S. (10 Pet.) 306 (1836): "we cannot attach *any* condition to a grant of absolute property in the whole quantity" (emphasis supplied).

Secondly, as to the recognition by the United States of complete Spanish land grants under the general international law of state succession and the 1819 Treaty of Amity, Settlement, and Limits: The first sentence of article 8 of that treaty, *supra* p. [143] and 8 Stat. at 258, provided that:

> All the grants of land made before the 24th day of January, 1818, by his Catholic Majesty, or by his lawful authorities, in the said territories ceded by his Majesty to the United State, shall be ratified and confirmed *to the persons in possession of the lands*, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty. (emphasis supplied).

It was thus possible to argue that this treaty ratified and confirmed Spanish land grants only to per-

sons in possession of the lands when that treaty entered into effect (February 22, 1821). This argument was, however, squarely rejected in *United States v. Arredondo*, 31 U.S. (6 Pet.) 691, 743 (1832), where the Court said, in reference to that language of the treaty:

> The law deems every man to be in the legal seisin and possession of land to which he has a perfect and complete title; this seisin and possession is coextensive with his right and continues till he is ousted thereof by an actual adverse possession. This is a settled principle of the common law, recognized and adopted by this court . . . (citations). And is not now to be questioned.
>
> This gives to the words "in possession of the lands" their well settled and fixed meaning; possession does not imply occupation and residence; had it been so intended, we must presume they would have been used. By adopting words of a known legal import, the grantors must be presumed to have used them in that sense, and to have so intended them; to depart from this rule would be to overturn established principles.

It follows that the validity of the Galvez grant of Horn island to Catarina Boudreau did not depend, either under Spanish law or under international law as enforced in the United States, on the "inhabitation and cultivation" of that island by or on behalf of the grantee. Even "possession" of that island in the literal sense, we just saw, was not a precondition for the (automatic) ratification and confirmation of that grant by the 1819 Treaty.

There remains, finally, the (remote) possibility that the grant was abandoned while Spanish law was locally in effect, for unlike the common law, the civil law of Spain as then in force recognized the notion of loss of title to real property through dereliction (abandonment) even in the absence of acquisitive prescription (adverse possession) by a stranger in title. As provided by Law 50 of Title 28 of the fifth *Partida*:

> When a man abandons any immoveable property which belongs to him, for the reason that he does not like it, as soon as he actually leaves it with the intention of not claiming it afterwards as his, whoever first enters upon it will become its owner. But where he does not leave it, although he may state that he does not desire it to be considered his from that time forth, nevertheless while he still holds it in this way no one else has the right to enter upon it; and if he does, he will not obtain its ownership until the party actually leaves it, and abandons its possession.

It seems too clear for argument that neither Catarina Boudreau nor her heirs had "actually abandoned" Horn Island in that sense. Cattle were regularly kept on the island, at times with "negros" (slaves) in place to mind them; Mrs. Boudreau apparently kept, and her heirs were able to present, the title documentation. Even if there had been actual abandonment of Horn Island by Catarina Boudreau or those in privity of title with her, however, the island would not have thereby reverted to the status of Crown land (*realengo*) under Spanish law then in effect in the Mobile District. As held most recently (and convincingly) in *Atchley v. Superior Court*, 482 S.W.2d 883, 903 (Tex. Civ. App.—Eastland 1972), writ

ref'd n.r.e., it follows from the first sentence of Part. 3, 28, Law 50, *supra*, that "even upon abandonment title to the land does not revert to the sovereign but passes from the landowner to the first entrant."

Therefore, even in the (extremely unlikely) event that Horn Island was "abandoned" by Mrs. Boudreau or her heirs while Spanish law applied there, that property would not thereby have become part of the Spanish public domain but would have remained private. Consequently, it could not even then have become part of the public lands of the United States by state succession.

Summary and Conclusion

This memorandum deals with two simple questions. Was Horn Island validly granted in private property under Spanish rule, and if so, did it later revert to the status of Spanish Crown land through forfeiture or abandonment? These questions are of current relevance because private proprietary rights to that island have recently been asserted (and denied), and title to it has been quieted (as federal public land) in the United States.

It is hornbook law that land validly granted in private property by a prior territorial sovereign did not become part of the public lands of the United States by state succession. The main issue to be addressed herein, therefore, was whether a grant (*or concesión*) of Horn Island by Governor General Bernardo de Galvez to Catarina Boudreau, dated August 1, 1781, was valid under Spanish law then prevailing in the "Mobile District."

The grant here involved contains historical references and peculiarities of use of language which sup-

port its genuineness. It appears to be preserved only in the form of an English translation, but this was made, as required by Act of Congress, by an official of the United States sworn to his duty. It was recorded in a book of records kept pursuant to federal statutory mandate, and is still kept in the United States archives. There is persuasive evidence, compiled by a United States archivist in her official capacity, that the Spanish archives of West Florida (where the Spanish original of the grant might be found) were destroyed by fire more than one hundred years ago.

The area in which Horn Island is located (Spanish West Florida between New Orleans island) was contested between Spain and the United States, but not until 1804—long after that island was granted by Governor Bernardo de Galvez to Catarina Boudreau. Consequently, this grant was ratified and confirmed, so far as the United States is concerned, as a valid and complete Spanish land grant (*concesión de ierrenos*) by article 8 of the 1819 Treaty of Amity, Settlement, and Limits between Spain and this country.

This conclusion is supported by a number of well-known (but seldom read) decisions of the Supreme Court of the United States, rendered mainly in the fourth decade of the nineteenth century. These decisions also establish that the validity of the 1781 grant was not affected by its size (about two square leagues) or by the (possible) lack of continuous physical possession by the grantee. Again as spelled out by United States Supreme Court jurisprudence, the decision of the Land Commissioner East of the Pearl River not to recommend this grant for confirmation by Congress did not affect its validity. Since the Bou-

dreau grant documentation evidenced "complete title," it did not even have to be filed with that Land Commissioner. *Chitimacha Tribe of Louisiana v. Harry L. Laws Co.*, 690 F.2d 1157, 1169 (5th Cir. 1982) cert. denied, 464 U.S. 814 (1983).

Forfeiture and abandonment are non-issues in this context. Inhabitation and cultivation were not prerequisites for the (automatic) ratification of complete Spanish land grants (such as this one) by the 1819 Treaty, nor prerequisites for the validity of grants under Spanish law. Finally, even abandonment by the grantee (massively contradicted by the known facts) would not have reconverted Horn Island from private property into public land.

In conclusion, it is my opinion that as established by competent and persuasive evidence documentary, the pertinent jurisprudence of the Supreme Court of the United States, and Spanish law in effect at the relevant time and place, Horn Island was not part of the Spanish West Florida public domain when the United States acquired dominion over the area. In consequence, it was not incorporated into the public lands of the United States.

October 1, 1993 /s/ HANS W. BAADE
HANS W. BAADE

DEPOSITION OF MICHAEL KNIPFING

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. S79-0338(R)

UNITED STATES OF AMERICA, PLAINTIFF

vs.

ANDREW J. ADAMS, JR., ET AL., DEFENDANTS

PROCEEDINGS

MR. CAMERON: On the record. I would like him to sign this.

STIPULATION: It is stipulated by and between the parties that this deposition is being taken by agreement, pursuant to the Federal Rules of Civil Procedure. All objections, except those as to the form of the question, are reserved until such time as this deposition, or any part thereof, is sought to be introduced into evidence by either party.

MR. CAMERON: Please give him the oath.
Whereupon,

MICHAEL J. KNIPFING

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. CAMERON:

Q. State you name, please.

A. Michael J. Knipfing.

Q. What is your home address?

A. 5009 40th Place, Hyattsville, Maryland.

Q. What is your business address?

A. 350 South Pickett Street, Alexandria, Virginia.

Q. What is your occupation?

A. I'm a member of the staff of Branch of Lands and Title Adjudication in the Bureau of Land Management.

Q. What is your function in that position?

A. As a member of the branch, I deal with realty matters before the Bureau, rights-of-way, applications under the Color of Title Act, swamp applications, applications for leasing under the Recreation and Public Purposes Act, applications for conveyance of federally owned mineral interests under section 209 of the Federal Land Policy and Management Act. Other realty matters that the BLM would have an interest in.

In addition to those realty matters, the primary function of our office is dealing with the old records of the General Land Office which are still used today to help determine the status of public domain land as to when it was severed from the public domain, if ever.

Q. What is your educational background?

A. I have a bachelor's degree with a major in history from Mount St. Mary's College in Emmitsburg, Maryland. I have a law degree from Catholic University School of Law.

Q. What year did you get your law degree?

A. 1974.

Q. And your bachelor's degree?

A. '71.

Q. How many years have you been in your present position?

A. 3-1/2 years.

Q. What occupations have you had prior to this position?

A. Prior to this position, I worked for three years with the Prince Georges County which is a local county here in their zoning enforcement office. I was liaison between that office and their county office of law. I represented the county before administrative tribunals within the county, the board of administrative appeals, the board of zoning appeals.

Prior to that, I held jobs while I was in law school. I worked in the mail room of Lord & Taylor for awhile and I cut lawns for 11 years.

Q. How many people do you supervise now?

A. I don't supervise anyone except on—when I'm acting for the branch chief, I supervise approximately five.

Q. And you substitute as the acting chief when the branch chief is away?

A. Yes.

Q. Who is the branch chief?

A. William Dorasavage, D-o-r-a-s-a-v-a-g-e.

Q. Could you say that you were his deputy?

A. You could say that.

Q. How did you come to be associated with this lawsuit?

A. Well, I was requested by our regional solicitor in Atlanta to search our records and provide information from the records and provide copies of the records concerning certain lands located in the Gulf of Mexico that are on Ship, Horn, and Petit Bois P-e-t-i-t, B-o-i-s, two words.

Q. Who is the regional solicitor who made this request?

A. My first contact was with Jim Becker in that office.

Q. What were your directions from Mr. Becker?

A. To search our records, give him copies of records and advise him of other places he could look to find when and if the United States divested itself of title to these lands.

Q. Approximately what year was this?

A. Early 1981. I believe.

Q. When did you start employment there?

A. December of '78.

Q. When you began your employment there, were you put into this position upon your employment?

A. Yes.

Q. As deputy to Mr. Dorasavage?

A. No. I did not become acting chief to Mr. Dorasavage for about a year and a half.

Q. What assignments in particular did Mr. Becker give to you?

A. Well, it was a general request to search the records and get copies of any pertinent documents I could find relating to the disposition of those lands. It was nothing specific.

Q. Was it written? A written request?

A. It may have been written. I know there was some correspondence. But, I'm not sure.

Q. Did you meet with Mr. Becker?

A. Yes.

Q. When was this meeting, the first meeting?

A. Approximately a year ago. He flew up from Atlanta to meet with me.

Q. During your examinations of the records, how extensive an effort did you make?

A. I was primarily concerned with the records in the custody of our office. Those records in the tract books, the patent records. The plats and the field notes are also in the custody of our office. However, I did not examine them.

When the records in the custody of our office referred to records in the custody of other offices, I advised Mr. Becker and the Justice Department of where they could probably be located. I did not do searches in other offices to any great degree at all.

Q. Did you search any other office at all?

A. Yes. I personally, with Mr. Becker, went to the Department of State, went to the Library of Congress geography division and to the cartographic archives.

Q. What did you find at the library of Congress geography division?

A. I don't recall if we found anything.

Q. What did you find at the cartographic office?

A. The cartographic office, we were looking at exhibits from, as I recall, some old Supreme Court cases dealing with the federal acquisition of title down in that area. And I believe on one of the exhibits, I found a reference to a Supreme Court case that I gave to Mr. Becker and to Justice concerning a court decision that was determined related to recognition of that land coming to the United States through the Louisiana Purchase.

Q. What record, if any, did you find at the Library of Congress?

A. To my knowledge, we didn't find anything. I don't recall finding anything there. We were looking at maps. I don't recall finding anything.

Q. What records, if any, did you find at the State Department?

A. A transcription or a copy of the Louisiana Purchase. I think that's what we were looking for.

Q. Do you recall the names of any individuals that you met with at the State Department?

A. No.

Q. Library of Congress?

A. No.

Q. Cartographic office?

A. I really don't. It would have been someone in their office of, I think it is called, Fiscal and Judicial Archives, or something like that that has jurisdiction over the custody of Supreme Court exhibits. I don't remember the name of the person.

Q. Did you recommend any further searches to Mr. Becker?

A. Well, I didn't think it was my position to recommend anything to Mr. Becker. I just told him what our records showed, what we had, and I did advise him and the Justice Department as to where these other case files might be if they wanted to look further.

Q. And these are the plats that you just mentioned that you recommend?

A. No. Those are the places I went to. You asked me what places I went to.

Q. What other places did you recommend?

A. I recommended going to Suitland, Maryland. In Suitland, we have the National Archives and Records Service. I also recommended going to Suitland, Maryland, where the Federal Records Center is located. I also probably recommended a search in the National Archives beyond the cartographic division and I may have recommended other avenues, looking at abstracts of title or at the county recorder, stuff like that. I don't remember.

Q. Did you, at any time, or anyone working with you or for you, research records at the National Archives and Record Services center in Suitland, Maryland?

A. I have not researched those records.

Q. Do you know if Mr. Becker researched those records?

A. I don't believe he did. I believe the Justice Department researched those records.

Q. What about the Federal Records Center? Did you examine any records there?

A. We had—I did not go there and examine records. We may have had a file or two sent to us from there.

Q. Do you recall which files they were?

A. I believe the file that I recall was a file concerning a canceled homestead application. But I can't be more specific than that.

Q. Do you recall the individuals that you dealt with at the Federal Records Center that provided this information?

A. No. The general reference office or whatever the office is over there.

Q. Did you make this contact by telephone?

A. Yes.

Q. Do you know who at the Department of Justice conducted the search at the National Archives record center?

A. Not specifically I don't, no.

Q. Do you know when this was done?

A. No. I would assume last year, but I don't know.

Q. You mentioned one other, the National Archives. Did you or anyone working for you examine records at the National Archives?

A. I did not go to the National Archives except with Mr. Becker that one time to look at the cartographic maps, the Supreme Court exhibits.

Q. Are you aware of any other individuals at the center where you work conducting any investigation at any of these three places I just mentioned, the National Archives, the records center, the Federal Records Center or the National Archives?

A. No.

Q. Have you discussed with attorneys from the Department of Justice your possible testimony in this case?

A. Yes.

Q. What will be the points of your testimony?

A. I would state what the records showed, explain the record if I was asked, the records in the custody of our office.

Q. We will come back to that. I have some copies of some records in your office and I would like to come back to that at a later point.

From your point of view, where is the government's title problem in this case?

A. I don't see that the government has a title problem.

Q. In your opinion, the government does not have a title problem?

A. That's right.

Q. Who is in charge of the title search other than Mr. Becker and yourself?

A. Within my office?

Q. Both within your office and other individuals maybe with other agencies.

A. I was responsible for researching my office. Who the Department of Justice assigned to do the research, I don't know.

Q. Mr. Becker is no longer with the Atlanta regional office; is that correct?

A. That is correct.

Q. Who have you received directions from since his departure?

A. I have not received directions from anyone since his departure.

Q. When did he leave that office?

A. I'm not sure.

Q. When was the last time you received a directive from him?

A. Sometime the middle of last year.

Q. To your knowledge, who has the General Land Office records?

A. What records? Which records?

Q. All records, the original General Land Office.

A. Well, my office has the original General Land Office tract books and patent records as well as the original class of survey and field notes. There are other records dispersed beyond that in those different agencies I mentioned earlier.

Q. You mean at the National Archives Record Services center and the Federal Record Center?

A. And the National Archives itself.

Q. And the National Archives.

A. There also may be records in the state archives and things like this. We still have and have always maintained jurisdiction over the tract books and the field records and the plats and field notes.

Q. You have custody in your office of only the tract books, the patent records, the plats and field notes?

A. That's right.

Q. And the plats and field notes you did not examine?

A. I did not, no.

DEPOSITION OF DR. WILLIAM J. DORASAVAGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action No. S79-0338(R)

UNITED STATES OF AMERICA, PLAINTIFF

vs.

DR. ANDREW J. ADAMS, ET AL., DEFENDANTS

STIPULATION

BY MR. MARTIN:

This deposition is being taken pursuant to the Federal Rules of Civil Procedure in accordance with notice and by agreement of the parties. All objections except as to the form of the question will be reserved until such time as any material contained in this deposition is presented to be used at the trial of this case.

BY MR. HERMAN:

Let me just say one thing, that it's the position of the Government that since Mr. Dorasavage is not a party to this lawsuit, his presence here is voluntary and is done at the request of counsel for the United States to accommodate the Defendants.

BY MR. MARTIN:

And for the record let me state that the accommodations exhibited by the Government are tremendously appreciated by all of the Defendants. I hope that the spirit of cooperation will continue throughout the course of the trial.

BY MR. HERMAN:

Let the record show that counsel for the State is laughing.

* * * * *

WILLIAM J. DORASAVAGE

Having been first duly sworn, testified as follows, to-wit:

EXAMINATION BY MR. MARTIN:

Q. Mr. Dorasavage, my name is Jim Martin, and I represent the Beggerly family, which are some of the many Defendants involved in this litigation who claim portions of Horn Island. Would you state your name and address for the record?

A. My name is William J. Dorasavage.

Q. And your address, sir?

A. My residence is at 4709 Flower Valley Drive, Rockville, Maryland, 20853.

Q. By whom are you employed?

A. I'm employed by the Department of Interior, Bureau of Land Management, Eastern States Office, Alexandria, Virginia.

Q. What position do you hold with the Eastern States Office?

A. I'm Chief, Branch of Lands and Title Adjudication.

Q. How long have you held that position?

A. I've held this position approximately 13 years.

Q. Prior to that time where were you employed?

A. Prior to that time I was an active real estate broker.

Q. Where?

A. Let me clarify the records. I came into Government in 1958 as a land law examiner, and I became Chief of Title Services in 1969. My career with the Government started in 1958.

Q. With the Eastern States Office?

A. No, with the Branch of Field Services in the Bureau of Land Management.

Q. Was that located in Washington?

A. Washington, D.C.

Q. And prior to 1958, were you an active real estate broker?

A. Yes, I was.

Q. In what area?

A. Maryland.

Q. Mr. Dorasavage, what is your educational background?

A. I attended grammar school and high school in Pottsville, Pennsylvania; I attended Catholic University, Washington, D.C., undergraduate work, and then I attended the Catholic University Law School,

where I received a Juris Doctor and Master of Laws degree.

Q. What was your undergraduate degree in?

A. I didn't have an undergraduate degree. I had four years, and then I enlisted in the Army Air Force.

Q. Your Master of Laws degree, did you have any particular area of emphasis?

A. No particular area of emphasis.

Q. Have you at any time subsequent to your law degree engaged in the private practice of law?

A. No, I haven't.

Q. Could you briefly describe what duties you performed as a land law examiner with the Field Services branch?

A. My job had to do with the adjudication of claims, applications involving the 2,000 series of 43 CFR, which of course included exchanges, withdrawals, amendment of patents, state grants, the whole category covered by the 2,000 series.

Q. All right, sir. Now, as chief of the branch of Land and Title Adjudication section, can you state to us what specific duties and responsibilities you have?

A. I report directly to the chief, Division of Lands and Minerals, and as the chief, I'm responsible for the administration of transactions involving public lands in the eastern states area and also for the adjudication of title matters.

Q. What specific duties or services do you actually perform with regard to title adjudication?

A. I review the work that has been assigned to the adjudicators, the land law examiners, the paralegal specialists, the legal technicians in my branch, and as such I implement the land laws and the regulations and manual procedures.

Q. In a typical situation, how does a question of title that may or may not involve Federal lands come to your office or to your attention?

A. We have had the year before last approximately—we've furnished over 50,000 copies of title records, tract book pages, plats of survey, patent records for the public, for attorneys, abstract companies and the like, the reason being that our office contains the original GLO patent records, copies of the patent records, the GLO tract books and the plats of survey, on which title to lands to the public domain was transferred out of the United States. Our office is the recordation office for title conveyances out of the United States.

Q. In connection with your educational process, what courses in real property law or real estate titles have you had?

A. Real property law, trusts, contracts, conveyances.

Q. Okay. Mr. Dorasavage, are you familiar with the subject matter of this lawsuit?

A. I am definitely familiar with the subject matter.

Q. When did you first become aware of this case?

A. I first became aware of this matter when title attorneys from the Park Service asked for status reports to Horn Island, Ship Island and Petit Bois

Island approximately 10 years ago. It was a request for copies of our tract book pages and a status report.

Q. That would have been approximately early 1970s?

A. Approximately. I would have to look at the record to come up with a definite date.

Q. Do you know what the nature of their request was?

A. Yes. They requested the status of these particular islands, and documented status of it.

Q. Do you know what the purpose of their inquiry was?

A. The purpose—it had to do with—at that time no, I did not know the purpose of their inquiry.

Q. Do you know now what their purpose was?

A. Their purpose was as I understand it is to—that the Park Service wants to include these lands in the Gulf Islands National Seashore.

Q. Are you familiar with the Gulf Islands National Seashore Act which was passed in the early 70's?

A. I know of it, but specifics, no.

Q. Do you know the name or names of the attorneys within the Park Service who made the inquiries with you?

A. A Mr. Becker.

Q. And did you comply with his request at that time?

A. Yes, I did.

Q. If you recall, can you tell us what documents you provided to them?

A. Copies of the tract book pages and plats of survey.

Q. Did you render any report or opinion of the status of the title on these islands at that time?

A. At that time the status of the islands was that title was still in the United States.

Q. Did you so indicate in a written report to Mr. Becker?

A. Not in a written report. All he asked for was copies of the documents.

Q. Okay. Subsequent to that inquiry, what connection have you had with these islands?

A. Approximately a year ago our field solicitor in Atlanta requested the status and copies of documents covering these three islands, Ship, Horn and Petit Bois.

Q. Do you recall his name?

A. A Mr. Becker.

Q. Did you provide documents to him at that time?

A. Yes.

Q. What documents?

A. Copies of the tract book pages and the plats of survey.

Q. Would that have been essentially the same material that you had provided to that office in the early 70's?

A. Yes.

Q. Did you render a written opinion or report at that time?

A. This particular request was assigned to one of the adjudicators, a Mr. Michael Knipfing. The request came from Mr. Becker to the director to the branch and then to Mr. Knipfing.

Q. All right, sir. And did Mr. Knipfing render a report?

A. He provided Mr. Becker with these documents, the tract book pages and the plats of survey, and he was also on the phone with him, you know, I guess interpreting the tract book pages or plats of survey. I really don't know what went on between them, but there was conversation between Atlanta and our office.

Q. Did Mr. Knipfing write a report of the work that he performed at that time on this matter?

A. No, not to my knowledge.

Q. Did he prepare any memoranda for the file?

A. No.

Q. You say that on these two occasions plats of survey were provided. Do you recall the dates of those surveys?

A. No, I don't.

Q. Subsequent to that occasion approximately a year ago, what further contact have you had with this matter?

A. Mr. Knipfing was directly in charge of furnishing the status to these islands, and as such he was in contact with the Justice Department and our

regional solicitor's office. Also I have had contact with the Justice Department attorneys.

Q. At anytime since the early 70's, have your, Mr. Knipfing or anyone else within your department issued written memoranda, position statements or reports or opinions with regard to the status of these islands?

A. Not to my knowledge, no written reports.

Q. Mr. Dorasavage, you indicated that you office possesses the original GLO patent records, plat books and tract books. Are there any other documents pertaining to title to public lands that your office possesses?

A. There are reference materials in the office pertaining to these categories of Federal land records. There are four main categories of Federal land records. First is the tract books, second the patent records, third are the plats and field notes, and fourth are the case files. Our office, the Eastern States office, has all of the original tract books, GLO tract books, GLO patent records, and we have plats of survey and field notes. The fourth category, the case files, they are in a depository in the National Archives.

Q. Now, when you say case files, what do you mean by that?

A. Well, these files would contain papers leading up to the patenting of a tract of land.

Q. Are those case files indexed by any type of system?

A. They're identified by case number.

Q. Is there a key or an index in addition to the case number? In other words, is there a source that a person could go to determine—for instance, a case file pertaining to Horn Island. Are there any indexes, catalogues or other reference material that would key into those case files?

A. The key, of course, to the records is the legal description. Back in 1785, there was an act passed called the Land Ordinance Act, and what this Act provided for was the survey of land before sale or disposal. The reason for this was to identify the land with certainty. In other words, just as we're identified by the Federal Government with our Social Security numbers, land, public domain land is identified by a legal description And at that this the rectangular system of survey was implemented, and our records, the tract book records are all indexed by legal description, which would include aliquot part, section, township, range, land district or meridian. If somebody was interested in obtaining a copy of a patent record to a certain tract of land, we would go to the particular township and range. These tract books are indexed by township and range. We would go to the section and then the aliquot part. The individual purchaser or claimant to the land, his name would be there; the acreage would be there; the cost of the land, and the case file would be identified by number. So any tract of land, public domain land that exists, we can just zero right into these tract books and identify the particular sale or case file.

Q. Without going to the tract book or the patent book, is there a way to key into the case file?

A. Yes. There are other ways you can key into the case file. You can check the local land office plats

of survey. It was the duty of the register at the time lands were disposed of in the local land offices to note the name or number of the sale on the particular tract of land.

Q. Mr. Dorasavage, are you familiar with how the United States Government acquired the West Florida territory?

A. I'm not familiar with it. I haven't looked into it.

Q. Are you familiar with what lands are considered to have been a part of the West Florida territory?

A. To the best of my recollection, these lands were included in part of the Louisiana Purchase.

Q. All right. Would you accept the statement that the West Florida territory included the barrier islands off the Coast of Mississippi, including Petit Bois, Horn and Ship?

A. I think the records will show that those islands were included in the Louisiana Purchase.

Q. And do you recall the approximate date of that purchase?

A. 1803.

Q. Do you know by whom the part of what is now the State of Mississippi below the 31st parallel was occupied by prior to 1803?

A. Do I know who?

Q. Yes, sir.

A. Our tract books fail to disclose any entry prior to 1803. In fact, there's nothing on the tract books prior to that date.

Q. So what is the beginning date of the tract book system within the United States?

A. The beginning date was approximately the year 1800.

Q. Now, is that as to the entire United States, or are we just talking about this part of Mississippi?

A. That's as to the United States. The tract book system actually started around the year 1800, and the first ledgers covered lands in Ohio.

Q. And then to the southern part of Mississippi, including these islands, the tract book system was begun sometime subsequent to 1803?

A. The tract book system would actually begin when the local land offices opened for that particular district. The registers and receivers were accountable for the tract books and for monthly registers of sales.

Q. Do you know when the land district offices for the area including Jackson and Harrison Counties, Mississippi, were opened?

A. I don't have that information in front of me, but I do have that information.

Q. Do you have an estimate at this time?

A. The land offices were usually opened at a time when the lands were surveyed and put up for sale, as a general rule.

Q. Do you know when the lands including Horn, Petit Bois and Ship Islands were surveyed?

A. I know they were surveyed, but I don't know the exact date.

Q. And it is your testimony that lands would have to be surveyed first by a duly appointed surveyor prior to those lands being disposed by way of sale?

A. That's correct.

Q. And we're talking there about public domain lands?

A. Yes.

Q. Which are lands considered to be owned by the sovereign, or the United States?

A. Yes.

Q. Do you know whether or not there were any lands included within the Louisiana Purchase which may have been subject to private claim or ownership at that time?

A. The registers and receivers received instructions in the early 1800's, about 1803-1804, regarding private land claims, regarding the admissibility of evidence regarding these private land claims, and as such they were instructed to prepare reports, abstracts, which would be sent to the General Land Office in Washington at this period, and then on to the Secretary of Treasury, and then on to Congress for whatever confirmation or whatever.

Q. By whom were these registers and receivers appointed?

A. At that time they were appointed by the Secretary of Treasury.

Q. By what authority?

A. I can't answer that.

Q. All right, sir. Do you know how the registers' and receivers' offices were set up and organized?

A. Yes. Of course, there were two people, a register and a receiver. The register was the person who took in the monies—the receiver took in the monies and the register issued the certificate. Usually in a sale, a cash sale, the purchaser retained a copy of his receipt for payment of the lands and also a copy of the certificate, which entitled him to a patent. The other copies were sent to the General Land Office in Washington, where this information was posted on the tract books, which we have in our office today, and of course this information was also posted on the local land office tract books. There were two sets of tract book. Also at the end of the month, the receiver submitted a docket which showed the payment for lands in his particular district, these lands of course being identified by legal description, the name and the payment.

Q. When you say the receivers received the money and the register issued the certificate—

A. Yes.

Q. —you're speaking of lands which a person or persons would have purchased?

A. Subject to sale, true.

Q. And the purchase money would have been paid to the receiver?

A. Yes.

Q. And there you're talking about public domain land?

A. Yes.

Q. All right. Are you aware of any lands which were claimed by private individuals at the time of the Louisiana Purchase?

A. The tract books do not reflect any claims for lands in Horn, Petit Bois or Ship Island.

Q. Is the method of purchase from the receiver and the certificate from the register the only method by which an individual could have obtained title to lands included within the Louisiana Purchase at this particular time?

A. It's a possibility of a private bill, private act passed by Congress. That would be the other way.

Q. Would that be the only other way? That is by private bill, which means I guess some special legislation concerning a particular individual for a particular piece of property?

A. That's correct.

Q. And then the other method would be through the purchase from the registers and receivers?

A. That's right.

Q. Could you give us an example or an instance pertaining to the special legislation method?

A. Well, there have been occasions when this has happened and these claims can be found in a Synoptical Index of Laws and Treaties that was published around 1851, I think at the request of the Senate, and this index, Synoptical Index lists the special acts plus other statutes that were passed in the period, about a 50 year period—53 year period—from the late 1700's to about 1850. This is one of the indexes.

Q. That index would contain information pertaining to these special pieces of legislation?

A. It would identify the legislation and where to find the volume and page of the statutes.

Q. But there again, you're talking about legislation directly pertaining to a specifically named individual and a specifically identified piece of property?

A. That's right.

Q. Mr. Dorasavage, over the course of your many years of experience with the Government Land Office, have you ever experienced situations where the tract books were inaccurate or incomplete?

A. There have been occasions when the numbers could have been juxtaposed. For instance, the tract book could read the case file number being 69 when it was 96, a clerical error or something like that; however, these errors—there are such a network of records that can zero in on that particular number. For instance, all one would have to do is refer to the local land office plat of survey where that number would be posted, and it would be correctly identified as 69.

Q. Have you ever run into situations where disposition of certain lands for one reason or another did not get properly recorded in the tract book?

A. There have been occasions where there hasn't been a recording in the tract book, but again, in checking with the local land office tract book, checking with these supportive documents, the local land office plat, checking with the state, the state's records, checking with the county recorder, these are techniques that are used to actually identify whether

or not there was an entry, you know, against that particular tract.

Q. So there have been occasions where for whatever reason the information did not get recorded on the GLO tract books, but you had means and methods of cross-checking that with other offices to identify the property and answer whatever question might be raised at that time?

A. Not only that, but we had the local land office tract books, for instance, for the State of Mississippi, in our office, the State of Alabama in our office, so we actually had both tract books and we could take a fast check on that. We have the local land office plats at the cardographic section of the Archives. We could check on that.

Q. Now, you've made several references to the local land office. What do you mean by local land office?

A. The main office was identified as the General Land Office, and this office is usually in Washington. This is where the title documents are recorded. Land offices are satellite offices. There were quite a few of them opened up throughout the different states, and the purpose was to dispose of the land, and when this was done they were closed. In other words, they were satellite offices. These are actually the offices that sold the lands, and they had certain jurisdictions, certain areas.

Q. Was there a local land office in Mississippi in 1803?

A. To the best of my knowledge, there were about five or six offices in the State of Mississippi. As to the particular dates that they opened, I don't know,

but I have that information, the openings and closings of those various offices and their areas of jurisdiction.

Q. Beginning sometime after 1803?

A. Beginning after 1803.

Q. Would there have been several different land offices which would have had the responsibility of maintaining records pertaining to the southern part of the State, including these islands?

A. Could you repeat that question, please?

Q. All right. You stated that since 1803, there have been several local land offices within the State of Mississippi that opened and closed at various and different times, which you don't recall at the moment, but—

BY MR. HERMAN: Excuse me. I don't think he said since 1803; he said sometime after 1803.

Q. All right, after 1803. My question to you is was there more than one local land office which would have had responsibility for land records dealing with lands in the southern part of the State, including Horn, Petit Bois and Ship Islands?

A. To the best of my recollection, you had the office at Augusta, you had the office at Jackson in those early years covering those lands in the south-eastern part of Mississippi.

Q. All right, and you don't know offhand when these particular offices opened or closed?

A. No, but I do have that information. They opened and closed at various times. Some offices were merged into other offices.

Q. Do you know the procedure by which the records were transferred from one local office to the other and then ultimately to the General Office in Washington?

A. If the records of the tract books in one office—if this particular office closed, the tract books were then sent to the next office that encompassed that particular area. In other words, if the area of jurisdiction of a particular land office covered just so much territory and most of the lands were sold in that territory, it was useless to keep that office open, and the records in that office were sent to another office that would enlarge its area of jurisdiction. And when they finally closed the records, the tract books were sent to Washington and kept in the General Land Office.

Q. Are you aware of any instances where the land records developed at the local land office level were destroyed or misplaced prior to being sent up to the Washington office?

A. I'm not aware of any situation like that.

Q. Do you know whether or not the GLO Office in Washington has complete sets of records compiled by the local land offices which would have had jurisdiction of these islands?

A. We have the tract books that cover those particular townships and ranges. Yes, we have a set of tract books which would show disposals for those islands.

Q. Are those complete sets?

A. Complete sets of GLO tract books?

Q. Yes, sir.

A. Yes.

Q. Do you have any knowledge pertaining to the method by which the registers and receivers prepared reports and how often they submitted the reports to higher authorities?

A. The register and receiver would send a monthly report to the General Land Office indicating the sales, the monies taken in, identify the case number and what-have-you, and that would be submitted monthly along with the case files, the copy of the receipt and the copy of the certificate.

Q. Mr. Dorasavage, with regard to the land which is the subject of this lawsuit, specifically what records or files did you or any of your employees review to determine the status of the title to those lands?

A. The General Land Office tract books, which is one of the main categories; the local land office tract book; the indexes of private land claims; the local land office plats of survey; the monthly register and receiver's report; the docket index of private land claims in the State of Mississippi; the patent office index for private land claims in Mississippi; the Synoptical Index of Laws and Treaties covering the period from the late 1700's to 1850; The Grassroots, which is a compendium of private land claims that were noted in Gales and Seaton, which of course consist of eight volumes of abstracts and ledgers of private land claims; a three volume index of claims submitted to Congress that was published by the Genealogical Society for the years late 1800's to approximately 1850—late 1700's, pardon me, to 1850.

Q. Late 1700's?

A. Yes.

Q. Okay.

A. An index of donation and private land claim patent records covering 28 volumes of patents; private land claim files that are located in the main Archives building; plats of survey; some other documents that are in a miscellaneous letter file pertaining to Horn, Ship and Petit Bois Islands that are on file at the National Archives and Records Service; requests for files and status from the State office, State of Mississippi. I do have a list of records checked. This appears to be the list. There could be one or two omissions. I have the list itemized.

Q. Could you make that list available to us?

A. [Obtains list] And also an index inventory of land entry papers of the General Land Office prepared by the National Archives in 1949. [Tenders list to Mr. Martin]

Q. You've got one entry here, 1888 letter from Land Office Register. Do you recall specifically what that was?

A. Yes, it was a request from the Commissioner to the Register at the land office at Jackson, as to what his records show for Horn Island, and the report was that the records showed nothing as far as Horn Island is concerned, but he has the plats of survey. I have a copy of that document.

BY MR. HERMAN: That document was submitted in the group of documents that we filed with the Court.

Q. Mr. Dorasavage, the listing which I presume is in your handwriting—you prepared this list?

A. Yes.

Q. On the back of it it has what appears to be several dates with initials out beside. Could you tell us what this is?

A. Yes, these are some of the dates where the General Land Office was transferred to different buildings.

Q. All right.

A. In 1839, the Land Office was located in the Treasury Building; in '55—

Q. 1855?

A. 1855, it went to the Patent Office Building; 1900 it moved to the General Land Office Building; in 1917 the office moved to what is known as the GSA Building today; in 1937 the office was moved to the New Interior Building; and in 1966 it moved to Silver Spring, in 1979 it moved to Alexandria.

Q. And each of those moves necessitated the moving and transferring of all the documents?

A. Yes.

Q. Including the tract books, patent books and so forth?

A. Yes.

Q. Do you have any knowledge as to any records being misplaced or lost during one or more of any of these moves?

A. No, we have the records to the best of my knowledge. All the books are identified by volume numbers, one, two, three, four, five.

Q. All right. With regard to these several items of records which you have indicated were reviewed, I

believe you earlier testified that the GLO tract books are located in your office, in the GLO office?

A. Yes.

Q. Would the answer be the same for the local land office tract books?

A. The local land office tract books are at the National Archives and Records Service today.

Q. What about the indexes of private land claims?

A. Is that all you have, indexes of private land claims?

Q. Yes.

A. There are all sorts of indexes; the docket index?

Q. I attempted to write down while you were listing these, and what I've got written down is indexes of private land claims. Is there more than one index that you're referring to?

A. We have a computerized index called Grassroots of America. This is an index to the American State Papers, Gales and Seaton edition.

Q. Where is that located?

A. In my office.

Q. So the third item that you mentioned a while ago, the indexes of private land claims, you are meaning several different sources of materials, one of which is The Grassroots?

A. One is The Grassroots, another was The Index to Private Land Claims in Mississippi, which is kept in the Patents Division.

Q. Patents Division of GLO?

A. Of GLO.

Q. Is that in the Alexandria office?

A. Yes.

Q. All right. The fourth item I've got here is local land office, and that's all I've got written down here, but what did you mean by that?

A. Local land office plats of survey.

Q. And where are they located?

A. At the Car[t]ographic Section of the National Archives.

Q. What about the monthly register and receiver reports?

A. Those reports are at the National Archives and Records Service.

Q. Docket index of private land claims in the State of Mississippi.

A. Those are located in the Patent Section of our office at Eastern States.

Q. And then Patent Office Index of Private Land Claims in Mississippi.

A. Repeat that?

Q. Patent Office Index of Private Land Claims in Mississippi.

A. That's in the Patent Section where the private land claims are identified by name.

Q. And Synoptical Index of Laws and Treaties from late 1700's to 1850.

A. That is in my office. That index was prepared under the direction of the Secretary of the Senate.

Q. Three volume index of claims submitted to Congress published by the Genealogical Society.

A. It's a digested summary containing an alphabetical list of private claims presented to the House of Representatives with reference to the journals, reports, bills from the first to the thirty-first Congress, compiled by order of the House of Representatives, published by the Genealogical Publishing Company of Baltimore.

Q. Where is that located?

A. In my office.

Q. Index of Donations and Private Land Claim Records, 28 volumes. Where is that located?

A. That index is located in the Patent Record Section of Eastern States office.

Q. Private Land Claim files located in main Archives Building. Okay, that would be main Archives Building. Plats of survey.

A. That would be in the Eastern States office.

Q. Other documents and miscellaneous letter file.

A. That would be at the National Archives and Records Service.

Q. Request for files and status from State of Mississippi. That would have been the documents you received from the Secretary of State's office?

A. Yes.

Q. Index and Inventory of Local Entry Papers at GLO, prepared by National Archives in 1949?

A. It's a publication. I have a copy in my office.

Q. When were these several documents reviewed?

A. I reviewed all of these documents the past month.

Q. Sir? Within the past month?

A. Within the past two or three weeks. Not all of them. I've had the land law examiner specialist examine the documents at the Archives in Washington, the local land office tract books at the National Archives and Records Service and the local land office plats at the Cardographic Section.

Q. And what is his name?

A. Tim Hensley.

Q. And when did he perform his search?

A. The past week.

Q. All right. Now, he would have searched the records at the Archives?

A. Yes, in Washington.

Q. Did he search anywhere else?

A. At the National Archives and Records Service at Suitland, Maryland.

Q. All right.

A. And the Car[t]graphic Section of the National Archives on Pickett Street in Alexandria.

Q. All right, those two places?

A. Three places.

Q. Okay, National Archives and the Records Services Center are two different things—

A. Yes.

Q. —but they're both located at Suitland?

A. The National Archives and Records Service is located at Suitland.

Q. All right. Now, is that one entity, or are those two—

A. It's one building.

Q. All right, but they're two separate entities or organizations that just happen to be located in the same building, is that right?

A. The main Archives building is in Washington, and the satellite office is out there. They can't store all their records downtown.

Q. So what you're saying is Mr. Hensley reviewed the records at the National Archives in Washington, D.C., and then the National Archives in the Service Center building, which is at Suitland?

A. He reviewed the private land claim documents at the National Archives in Washington and he reviewed the local land office tract books at the National Archives at Suitland.

Q. And then he checked also at the Cardographic Section, which is in Alexandria?

A. The local land office plats.

Q. All right, and then you reviewed the tract books and the patent books at your office?

A. Yes, the original General Land Office books.

Q. All right, and you would have performed that review within the last couple of weeks?

A. Last two-three weeks.

Q. Did anyone else assist you in performing these reviews—yourself and Mr. Hensley?

A. That's right.

Q. And Mr. Hensley is a land law specialist in the GLO office at Alexandria?

A. He is a land office examiner in my office—

Q. All right.

A. —specializing in private land claims.

Q. And what is the conclusion of yours and Mr. Hensley's review with regard to Petit Bois Island, for instance?

A. That there were no disposals, no private land claim disposals for Petit Bois Island or Ship Island and for Horn Island.

Q. Did you discover any private claims having been made for any portion of any of those islands?

A. There were claims—there was a claim by the heirs of Farmar in the name of Sheffield for Horn Island, but the claim was denied—lack of evidence and no inhabitation or cultivation.

Q. And what is the source of that conclusion?

A. The Commissioner's abstract, the original which is in the National Archives in Washington, and the publication in Gales and Seaton of that abstract.

Q. Did you find any other private claims?

A. No, sir.

[SHORT RECESS]

Q. [MR. MARTIN] Mr. Dorasavage, in addition to the documents that you have listed, have you had occasion to review any census records that would pertain to the islands?

A. I have not reviewed any census records.

Q. Are you aware of whether or not there may have been people actually living on those islands say from 1800 to 1950?

A. The records that I examined, the official General Land Office records, which would reflect any entry or purchase by any person for public domain land, did not reflect any other information in addition to what I've given you. In other words, census records would actually have nothing to do with the purchase of public domain. Public domain, of course, is disposed of by authority of a public land law or a statute.

Q. And would your answer be the same with regard to review of any local ad valorem tax records to see whether or not any of the properties within this lawsuit were being taxed to private citizens?

A. Any person who would be interested in acquiring title to a piece of public domain would have to file an application in the local land office, and of course that application would have to be based on a particular public land law—for instance, The Cash Act, the Credit Act, the Homestead Act. There are over 5,000 land laws, and the basis for his acquiring any portion of the public domain would have to be in accordance with those land laws.

Q. That wasn't my question. My question is did you make any review of any records which would indicate private citizens paying local, county and state ad valorem taxes on portions of these islands?

A. No.

Q. You're not aware of whether that is a fact or not?

A. I didn't—I would have no occasion to do anything like that.

Q. As I mentioned to you at the beginning of this deposition, I represent the Beggerly family. Have you had occasion to become familiar with the Beggerlys' claim in this matter?

A. No, I have not.

Q. Have any of the attorneys involved on behalf of the Government discussed with you the claim of the Beggerlys?

A. No, they haven't.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

Civil Action No. S79-0338(R)

UNITED STATES OF AMERICA, PLAINTIFF

v.

ANDREW J. ADAMS, ET AL., DEFENDANTS

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Plaintiff United States sues to quiet title to various lands on three islands off the coast of Mississippi. In support of its option for summary judgment plaintiff will show: (1) that its ownership commenced in 1803 through the Louisiana Purchase; (2) that no patents of any kind have ever been issued by the United States to these lands; and (3) that no land grants had been issued by France, Spain, or Britain to any of the defendants or their predecessors in interest either before or after the Louisiana Purchase.

Additionally, plaintiff will dispose of various claims based on the Color of Title Act, 43 U.S.C. 1068, *et seq.*, the Swamp Lands Act, 43 U.S.C. 892, and on such theories as "lost grant," estoppel, laches, and waiver. Appendix 3 is a list of defenses as asserted by each defendant.

In short, the history of these islands demonstrates that at no time did the United States relinquish its title to the lands in issue, but rather always exercised dominion and control over them. Most significantly, the record[1] before the Court indicates that the lands

[1] The record on which the United States relies for its motion for summary judgment is cited in this brief and comprises a part of the massive compilation of documents filed with the Clerk of the United States District Court, Biloxi, Mississippi. "Exhibits" refers to Exhibits attached to the United States Motion for Summary Judgment, hereinafter, Exh. ____; Appendices are attached to this memorandum, hereinafter, Appendix ___, and documents in the record of this case, filed by the United States in compliance with the orders of this court regarding discovery are designated herein as "Docu. No.". Finally, exhibits of defendants also filed of record pursuant to discovery orders are labeled "Exh. of Beggerly, 15", etc.

were acquired from France in 1803 (App. 5) and that, beginning in 1847, all of the lands in question were withdrawn from entry for military purposes by Executive Order of August 30, 1847 (App. 1). Although portions of the islands were open to patent at various times after 1847, in fact no patents on the lands that are the subject of this lawsuit were ever issued out of the United States. These lands were reserved *in toto* in 1925 by Executive Order 4626 of July 3, 1925 (App. 2) and in 1958 by Public Land Order No. 1636 of May 14, 1958, 23 Fed. Reg. 3388 (May 20, 1958).

The record also demonstrates that throughout the period since the first surveys of the islands were made in 1847 (Exh. 3), the lands at issue here were in continuous federal use for: military or lighthouse purposes, a chemical warfare station, a Coast Guard target range and/or for other military purposes during World War II and thereafter as a wildlife refuge. Exhibit 4, Executive Order of July 7, 1852; Executive Order of September 3, 1900; Executive Order of April 12, 1906; Executive Order 5562 of February 26, 1931; Executive Order No. 10355 of May 26, 1952.

Based upon this record, as more fully discussed below, and the law, the United States is entitled to summary judgment in its favor.

I. THE LANDS IN QUESTION HEREIN PASSED TO THE UNITED STATES AS PART OF THE LOUISIANA PURCHASE UNDER THE TREATY OF PARIS OF 1803.

On two occasions the Supreme Court of the United States has determined that certain lands, including the three islands at issue in this lawsuit, came into the possession of the United States through the Louisiana Purchase. Nothing in defendants' submissions upsets or alters the binding nature of those Supreme Court rulings.

In 1829 Chief Justice John Marshall found that the portion of the State of Mississippi south of the 31st parallel, an area which includes Horn, Ship, and Petit Bois Islands, passed to the United States as part of the Louisiana Purchase under the Treaty of Paris in 1803. *Foster and Elam* v. *Neilson*, 2 Pet. 253 (1829); *United States* v. *Louisiana*, 363 U.S. 1, 81 (1960). The Louisiana Purchase does not contain specific land descriptions of the territory transferred from France to the United States (Document No. 09473) and *Foster* was an early case in which a determination of the precise boundaries was required for the Court to resolve the litigation before it. In *Foster*, Justice Marshall reviewed the diplomatic history involving the Louisiana and Florida territories, and various claims of and disputes and treaties between Britain, France, Spain and the United States. He concluded that the position of the United States, which was that the land between the Iberville and Perdido Rivers, which includes Ship, Horn and Petit Bois Islands, did pass to the United States from France through the Louisiana Purchase. (See map attached as App. 5)

Marshall acknowledge[d] that the United States' interpretation was disputed by Spain. However, he explained why the Court would respect and adhere to the diplomatic and political position taken on behalf of the United States by the President and the Congress:

> The judiciary is not that department of the government, to which the assertion of its interests against foreign powers is confided; and its duty commonly is to decide upon individual rights, according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous.
>
> *We think then, however individual judges might construe the treaty of St. Ildefonso, it is the province of the Court to conform its decisions to the will of the legislature, if that will has been clearly expressed.* (Emphasis added)
>
> 2 Pet. at 307

Marshall then recited all of the actions taken by the President and the Congress asserting United States sovereignty over the area, and concluded by stating:

> After these acts of sovereign power over the territory in dispute, asserting the American construction of the treaty by which the government claims it, to maintain the opposite construction in its own courts would certainly be an anomaly in the history and practice of nations. If those departments which are entrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country of which it is in possession, and which it

claims under a treaty; if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. *A question like this respecting the boundaries of nations, is, as has been truly said, more a political than a legal question; and in its discussion, the courts of every country must respect the pronounced will of the legislature.* Had this suit been instituted immediately after the passage of the act for extending the bounds of Louisiana, could the Spanish construction of [*sic*] the treaty of St. Ildefonso have been maintained? Could the plaintiff have insisted that the land did not lie in Louisiana, but in West Florida; that the occupation of the country by the United States was wrongful; and that his title under a Spanish grant must prevail, because the acts of congress on the subject were founded on a misconstruction of the treaty? If it be said, that this statement does not present the question fairly, because a plaintiff admits the authority of the Court, let the parties be changed. If the Spanish grantee had obtained possession so as to be defendant, would a Court of the United States maintain his title under a Spanish grant, made subsequent to the acquisition of Louisiana, singly on the principle that the Spanish construction of the treaty of St. Ildefonso was right, and the American construtions wrong? Such a decision would, we think, have subverted these principles which govern the relations between the legislative and judicial departments, and mark the limits of each. *Id.* at 309. (Emphasis added).

Marshall's findings were reaffirmed one hundred and thirty-one years later in another Supreme Court decision, *United States* v. *Louisiana*, *supra*, a case involving a dispute between the United States and the States of Mississippi, Alabama, Louisiana, Texas, and Florida over rights to lands, minerals and other natural resources underlying the waters of the Gulf of Mexico. The Court rejected Mississippi's claim to a three league seaward landing relying in part on Marshall's analysis in *Foster*. It held without ambiguity that:

> [T]he portion of the State of Mississippi south of the 31st parallel passed to the United States as part of the Louisiana Purchase under the Treaty of Paris in 1803 and not as part of West Florida under the Spanish Treaty of 1819. 363 U.S. at 81.

Defendants' contention that the United States did not receive the islands in question from France through the Louisiana Purchase is wrong. Indeed, the matter is really not one open to dispute at this time; it was settled over 150 years ago. As shown by the Supreme Court decisions discussed above, that very contention has been rejected by the judiciary, the Executive and the Legislative branches of our government from the earliest days of our nation. Thus, this Court has no alternative but to reject it also.

II. THERE WERE NO FOREIGN LAND GRANTS EVER ISSUED ON THE SUBJECT LANDS

In order to settle private claims to lands becoming part of the United States, Congress has periodically established various commissions to adjudicate the merits of the claims. See, e.g., Act of April 25, 1812, 2

Stat. 713, *Beard* v. *Federy*, 70 U.S. 478, 486-87 (1865); Act of March 3, 1851, 9 Stat. 631. Once a claim has been favorably adjudicated and approved by Congress, a patent can be issued. A patent is a deed of the United States evidencing title. As the Supreme Court stated in *Beard* v. *Federy*, *supra*, 70 U.S. at 492: "This instrument is, therefore, record evidence of the action of the government upon the title of the claimant."

Under the Act of April 25, 1812, 2 Stat. 713, a commission was set up to ascertain French, British and Spanish grants on the territory which included the lands at issue in the present case.[2] The Act required preparation of a report by the commission to be submitted through the Secretary of the Treasury to Congress for final determination. Secs. 7, 5, Act of April 12, 1812, 2 Stat. 713. Congress then was to make a final determination by passing legislation approving specific claims if they were found to be valid. By Act of May 11, 1820, 3 Stat. 528, Congress confirmed those claims favorably reported by the Secretary of the Treasury.[3] Following congressional action the local land offices issued certificates and the general land office in Washington issued patents. 3 Stat. at Large 523 at 532.

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[2] On April 25, 1812, Congress passed, "An act for ascertaining the titles and claims to lands in that part of Louisiana which is east of the river Mississippi and island of New Orleans covering claims to lands south of Mississippi territory, east of Mississippi River and the island of New Orleans, and west of the River Perdido." The Act divided the lands into two land districts, one of which was at Jackson Courthouse Established under the Later Act of 1820, *infra*.

[3] Approval was made under the Act of April 25, 1812.

With regard to the lands at issue in this case, the record is conspicuously blank; there is no favorable commission report, no congressional approval, and no patents. In sum, there is no record of any defendant or predecessor in interest having a valid patent based on a foreign land grant.

III. NO PATENT ON THE SUBJECT LANDS WAS EVER ISSUED OUT OF THE UNITED STATES

The United States title to the lands in issue derives from the Louisiana Purchase of 1803 and title to land owned by the United States can be divested only by Act of Congress under Article IV, Sec. 3, Cl. 2 of the Constitution which provides:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

The Supreme Court has held this power of Congress to be plenary. "The power over the public land thus entrusted to Congress is without limitations . . ." *United States* v. *Gratiot*, 14 Pet. 526, 537 (1840); *Alabama* v. *Texas*, 347 U.S. 272, 273 (1954); see also *United States* v. *San Francisco*, 310 U.S. 16, 29-30 (1940). The means of divesting the United States of its title is by United States patent. The patent operates as a deed conveying all the interest that the United States possesses as to the land, *Beard* v. *Federy*, *supra*, and is the highest evidence of title. *United States* v. *Stone*, 69 U.S. 525, 535 (1864). Numerous acts of Congress provide diverse grounds

for the issuance of patents (e.g., Homestead acts, Swamp Lands Act, Desert Lands Act) and the conditions which must be met before a patent can be issued. The patent document itself reflects on its face the Act of Congress under which it is issued. Once issued, the patent is recorded among the land records retained by the Bureau of Land Management, Department of the Interior. 43 U.S.C. 6.

The Court presently has before it a documentary record of over 10,000 pages. It is composed of documents submitted by plaintiff and all of the defendants. There is not a single patent issued by the United States to any of the defendants or their predecessor's in interest on the lands in question in this suit. Under these circumstances the only reasonable conclusion this Court can reach is that the United States has never issued any patents to any of the lands in question.

* * * * *

CONCLUSION

For all of the reasons stated above summary judgment quieting title in the United States to the lands in issue should be granted.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

Civil Action Number: 1:94cv264RR

CHRIS W. BEGGERLY, ET AL., PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

[Filed: July 12, 1995]

MOTION TO AMEND

Come now the Plaintiffs, Chris W. Beggerly, et al., ("the Beggerlys") who file this, their Motion to Amend as follows:

1. On June 1, 1994, the Plaintiffs filed a complaint in this action.

2. There is now pending before the Court a motion to dismiss and cross motion for summary judgment which have been fully briefed. During the briefing process, the Plaintiffs cited as part of their jurisdictional basis the Quiet Title Act and the Tucker Act which they failed to cite in their jurisdictional allegation in their complaint. Both parties have briefed the applicability of these statutes to the present action in the briefs now pending before the Court.

3. The Plaintiffs request the Court to permit them to amend their complaint to add to their jurisdictional allegation, Paragraph 1, both the Tucker Act, 28

U.S.C. 1346 and 1491, and the Quiet Title Act, 28 U.S.C. 2409a. If permitted, the requested jurisdictional allegation, Paragraph 1 of the Complaint, will read as follows:

> This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution, laws and treaties of the United States; and pursuant to the Quiet Title Act, 28 U.S.C. 2409a and the Tucker Act, 28 U.S.C. 1346 and 1491.

4. The requested amendment is timely, will not cause prejudice and is authorized by both Federal Rules of Civil Procedure 15 and 28 U.S.C. § 1653 which states that: "defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts."

WHEREFORE, for the foregoing reasons, the Plaintiffs respectfully request that they be authorized to amend their complaint as requested.

Dated this, the 11th day of July, 1995.

Respectfully submitted,

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